

No. 87-2084

No. 88-214

Supreme Court, U.S.

FILED

JAN 4 1989

JOSEPH P. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

October Term, 1988

NORMAN JETT,

Petitioner,

vs.

DALLAS INDEPENDENT SCHOOL DISTRICT,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI IN
CASE NO. 87-2084 FILED JUNE 21, 1988

CROSS-PETITION FOR CERTIORARI IN
CASE NO. 88-214 FILED JULY 21, 1988

CASES CONSOLIDATED AND CERTIORARI
GRANTED IN BOTH CASES NOVEMBER 7, 1988

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APPENDIX TO PETITION FOR WRIT OF CERTIORARI

The following opinions, decisions, judgments and orders have been omitted in printing this Joint Appendix because they appear on the following pages in the Appendix to the printed Petition for Writ of Certiorari filed in Case No. 87-2084:

Memorandum Opinion and Order of the United States District Court, dated December 10, 1984 App. 45A

Amended Reformed Judgment of the United States District Court, dated February 7, 1985 App. 64A

Opinion of the United States Court of Appeals, dated August 27, 1986 App. 1A

Judgment of the United States Court of Appeals, dated August 27, 1986 App. 66A

Order of the United States District Court dismissing Defendant Frederick Todd, dated November 18, 1987 App. 84A

Order of the United States Court of Appeals dismissing Defendant Frederick Todd, dated December 10, 1987 App. 82A

Opinion and Order of the United States Court of Appeals on Suggestion for Rehearing En Banc, dated February 5, 1988 App. 33A

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Appendix to table of contents

RELEVANT DOCKET ENTRIES

DATE	NR.	PROCEEDINGS	
1983	1	Filed COMPLAINT. Issued Summons (12).	
May 17	4	Filed all DEFTS' ORIGINAL ANSWER.	
Jun 2	12	Filed Deft's CONSENT TO AMENDED PLEADING (pltf's amended complaint).	
Sep 26	13	Filed Pltf's FIRST AMENDED COMPLAINT.	
Nov 7	14	Filed DEFTS' FIRST AMENDED ANSWER.	
1984	24	Filed PLAINTIFF'S REQUESTED INSTRUCTIONS AND ISSUES.	
Apr 23	20	Filed DEFENDENTS' PORTION OF PRE-TRIAL ORDER.	
Apr 25	34	Filed DEFENDENTS REQUESTED GENERAL CHARGE AND SPECIAL VERDICT.	
Oct 5	MIN ENTRY...Jury Sworn & Seated. ocnt. to 10/10/84.		
Oct 9	42	Filed COURT'S CHARGE TO THE JURY.	
Oct 15	MIN ENTRY...Jury returned with verdict... Platf's counsel to submit judg.		
Oct 15	43	Filed JUDGMENT that Pltf recover of the Deft. Frederick Todd, individually, the sum of \$50,000.00, with interest as provided by law and that the Pltf., recover of the Deft. Frederick Todd & Dallas Independent School District, jointly & severally, the sum of \$50,000.00, with int. as provided by law, and that Pltf., recover of the deft. DISD the sum of \$650,000.00, with int. as provided by law, and his costs of action, including reasonable attys. fees as determined by this Court. Dkt'd 10/24/84. copies mailed to counsel.	
Oct 22			

DATE	NR.	PROCEEDINGS
1983		
Nov 2	44	Filed DEFENDANT'S MOTION FOR A JUDGMENT NOTWITHSTANDING THE VERDICT, FOR NEW TRIAL, REMAND OR REMITTITUR.
Nov 2	45	Filed DEFENDANTS' BRIEF IN SUPPORT OF ITS MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT, FOR NEW TRIAL, FOR REMAND, OR REMITTITUR.
Nov 28	46	Filed PLAINTIFFS RESPONSE TO DEFENDANTS MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT FOR NEW TRIAL AND FOR REMAND OR REMITTITUR.
Dec 10	47	Filed MEMORANDUM OPINION AND ORDER that Defts. Motion for Judgment Notwithstanding the Verdict should be, & hereby is, GRANTED to the extent that the award of \$50,000.00 in punitive damages against Deft. Todd is set aside as unsupported by the evidence, the award of \$150,000 in actual damages against DEFT Todd is set aside as duplicative, & the judgment should be reformed to reflect actual damages in the amt. of \$650,000 against Deft. DISD, of which Deft. Todd is jointly & severally liable for \$150,000...Defts. Mot. for New Trial is GRANTED on the issue of damages, unless Pltf. files a remittitur of \$200,000 awarded against deft. DISD, including \$100,000 awarded jointly and severally against defts. DISD and Todd. Defts. Mot. is, in all other respects, DENIED...Defts. Motion for Remand is DENIED. Dkt'd 12/10/84. copies mailed to counsel
Dec 14	47A	Filed PLTF's REMITTITUR.

DATE	NR.	PROCEEDINGS
1983		
Dec 17	48	Filed REFORMED JUDGMENT ORDERED that Pltf recover from DISD the sum of \$450,000.00 with interest of 9.5% per annum from Oct 23, 1984 until paid. Further ORDERED that Deft Frederick Todd is jointly & severally liable for \$50,000.00 of said \$450,000 awarded against deft DISD & that Pltf recover from Deft Frederick Todd the sum of \$50,000 with interest of 9.5% per annum from Oct 23, 1984 until paid. Further ORDERED that Pltf recover from Defts DISD & Frederick Todd, jointly & severally, his costs of Court, including reasonable attys fees as determined by this Court. Dkt'd 12/18/84. Copies mailed to counsel.
Dec 28	49	Filed PLAINTIFFS MOTION WITH SUPPORTING BRIEF AND AFFIDAVITS FOR AWARD OF ATTORNEYS FEES.
1985		
Jan 2	50	Filed PLTF'S AFFIDAVIT IN SUPPORT OF MOTION FOR AWARD OF ATTORNEYS' FEES
Jan 7	51	Filed DEFENDANTS' NOTICE OF APPEAL from the Judgment entered 12-17-84 and the order entered 12-10-84 (AIS to cnsl; no fee paid)
Jan 17	54	Filed DEFENDANT'S REPLY WITH SUPPORTING BRIEF TO THE PLAINTIFF'S MOTION FOR AWARD OF ATTORNEYS' FEES.
Jan 24	57	Filed DEFENDANTS' AMENDED REPLY WITH SUPPORTING BRIEF TO THE PLAINTIFF'S MOTION FOR AWARD OF ATTORNEYS' FEES.

DATE	NR.	PROCEEDINGS
1985		
Feb 7	59	Filed AMENDED REFORMED JUDGMENT...the Reformed Judgment signed by this Court on Dec 17, 1984 is amended as set forth below: ORDERED that Pltf recover from Deft DISD the sum of \$450,000.00 with interest of 9.5% per annum from Dec. 17, 1984, until paid. Further ORDERED that Deft Frederick Todd is jointly & severally liable for \$50,000 of said \$450,000 awarded against DISD, therefore, Pltf Norman Jett recover from Deft Frederick Todd the sum of \$50,000 with interest of 9.5% per annum from Dec. 17, 1984, until paid. Further ORDERED that Pltf recover from Defts DISD & Frederick Todd jointly & severally, his costs of court, including reasonable attys' fees through this date, in the sum of \$112,870.45, with interest at the rate of 9.5% per annum from Dec. 17, 1984 until paid. Dkt'd 2-8-85 copies mailed to counsel.
Mar 1	60	Filed DEFENDANTS' SECOND NOTICE OF APPEAL from the Reformed Judgment entered December 17, 1984.
1987		
Nov 18	66	ORDER OF DISMISSAL OF DEFT. FREDERICK TODD with prejudice, as a party deft. Frederick Todd & Colony Ins. Co. Dkt'd 11/18/87 copies mailed to counsel
Dec 18	67	ORDER OF DISMISSAL OF DEFENDANT FREDERICK TODD from USCA5 dated 12-16-87: "ORDERED that defendant Frederick Todd be, and hereby is, DISMISSED, with prejudice, as a party defendant in this numbered case".

DATE	NR.	PROCEEDINGS
1988		
Feb 8	68	JUDGMENT issued as Mandate February 5, 1988 from USCA5, "ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the District Court in this cause is reversed, and the cause is remanded to the District Court for further proceedings in accordance with the opinion of this Court. IT IS FURTHER ORDERED that costs on appeal be taxed one-third against appellant Todd and two-thirds against appellee Jett, said costs to be taxed by the Clerk of this Court".
	69	OPINION from USCA5...REVERSED AND REMANDED.
	73	OPINION ON SUGGESTION FOR REHEARING EN BANC from USCA 5 cy Judge Sanders. Received telephone call from Susan Vaughn, Case Manager, USCA5, to forward 10 Vols. original record to Fifth Circuit.
	Nov 11	
	Nov 14	Transmitted Original record on appeal to USCA5: case papers - 6 Volumes - including 3 Vols. labeled "A", "D", and "E"; transcripts - 4 Volumes labeled "F"

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

NORMAN JETT,)
)
Plaintiff)
)
VS.)
)
DALLAS INDEPENDENT SCHOOL)
DISTRICT; FREDERICK TODD, INDIVIDUALLY AND IN HIS OFFICIAL)
CAPACITY AS PRINCIPAL FOR)
SOUTH OAK CLIFF HIGH SCHOOL)
OF THE DALLAS INDEPENDENT)
SCHOOL DISTRICT; THE BOARD OF)
TRUSTEES OF THE DALLAS INDEPENDENT SCHOOL DISTRICT; AND)
LEONARD CLEGG, KATHRYN)
GILLIAM, ROBERT MEDRANO,)
ROBERT HESTER, RICHARD)
CURRY, HOWARD DRIGGERS,)
DUANE JARVIS, JOHN MARTIN,)
AND MARY RUTLEDGE, ALL IN)
THEIR OFFICIAL CAPACITIES AS)
MEMBERS OF THE BOARD OF)
TRUSTEES OF THE DALLAS)
INDEPENDENT SCHOOL DISTRICT)
)
Defendants)

FIRST AMENDED COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes NORMAN JETT, hereinafter called "Plaintiff," by and through his undersigned attorneys, and files this, his First Amended Complaint with the written consent of

counsel for Defendants in accordance with Rule 15(a) of the Federal Rules of Civil Procedure, said consent being attached hereto as Exhibit "A," and, for cause of action, would respectfully show the Court as follows:

I.

This is an action for legal and equitable relief in the form of damages, back wages, costs, and attorneys' fees. Jurisdiction is invoked pursuant to 42 U.S.C. §1981; pursuant to 42 U.S.C. §1983; pursuant to 28 U.S.C. §1331; and 28 U.S.C. §1343(3) and (4); and pursuant to the Constitution of the United States, particularly the First, Fifth and Fourteenth Amendments thereto. The Court's pendent jurisdiction is also invoked to consider Texas State causes of action. The amount in controversy in this cause is in excess of \$20,000.00.

II.

A. Plaintiff is an adult citizen of the United States and presently resides in the Northern District of Texas.

B. The Defendant DALLAS INDEPENDENT SCHOOL DISTRICT is an independent school district organized pursuant to the laws of the State of Texas for the purpose of operating a system of public schools and is before the Court by way of previously filed pleadings.

C. Defendant FREDERICK TODD is sued herein, both individually and in his official capacity as Principal for South Oak Cliff High School of the DALLAS INDEPENDENT SCHOOL DISTRICT, and is before the Court by way of previously filed pleadings.

D. Defendant BOARD OF TRUSTEES of the DALLAS INDEPENDENT SCHOOL DISTRICT, by virtue of the statutes of the State of Texas, is given and charged with the responsibility for the possession, care, control, and management of the affairs of Defendant DALLAS INDEPENDENT SCHOOL DISTRICT and is before the Court by way of previously filed pleadings.

E. Defendants LEONARD CLEGG, KATHRYN GILLIAM, ROBERT MEDRANO, ROBERT HESTER, RICHARD CURRY, HOWARD DRIGGERS, DUANE JARVIS, JOHN MARTIN, AND MARY RUTLEDGE are all sued herein in their official capacities as duly elected, qualified, and acting members of Defendant BOARD OF

TRUSTEES AND are before the Court by way of previously filed pleadings.

III.

A. Plaintiff is a public school teacher, coach, and athletic director, by profession, who is qualified and certified to serve in such capacities in the public schools in the State of Texas.

B. Plaintiff had been employed by Defendants as a teacher and coach at South Oak Cliff High School in the DALLAS INDEPENDENT SCHOOL DISTRICT since 1962, and in 1970 was promoted to head football coach and athletic director at South Oak Cliff High School.

C. On or about March 19, 1979, Plaintiff's contract to serve as a teacher, coach, and athletic director for South Oak Cliff High School was renewed by Defendants for a term of five (5) consecutive scholastic years, beginning with the 1979-1980 school year and continuing thereafter. A true and correct copy of the written portion of that contract is attached hereto, marked Exhibit "B," and made a part hereof for all purposes, the same as if copied herein verbatim.

D. Plaintiff would show that, at the time of the execution of said contract and as additional consideration therefor, it was agreed and understood by and between the parties thereto that Plaintiff would continue to serve and perform his duties as head football coach and athletic director of South Oak Cliff High School throughout the five (5) year term of said contract.

E. Alternatively, should same be necessary, Plaintiff would show that the foregoing facts gave Plaintiff an objective expectancy of his renewal and continued employment as head football coach and athletic director of South Oak Cliff High School for the five (5) year term of said contract.

IV.

A. Plaintiff would show that, throughout his employment with Defendants, Plaintiff has fully performed all duties required under the terms and conditions of said contract and agreement, and, in fact, Plaintiff would show that he has exceeded the normal duties of a teacher/coach/athletic director and has continuously devoted his time and effort to ensure the academic and athletic success of his students.

B. Plaintiff would show that in 1972, Defendant FREDERICK TODD became Principal of South Oak Cliff High School. Plaintiff would further show, that since the time that said Defendant was appointed Principal of South Oak Cliff High School, said Defendant has continuously and systematically conducted a series of activities designed to harass and undermine Plaintiff's efficiency and authority in the performance of his duties, and that such activities were conducted by said Defendant with intent to discriminate against Plaintiff on the basis of race.

C. Plaintiff would further show that on or about March 16, 1983, Defendant FREDERICK TODD called Plaintiff into his office and informed him that he had decided to "terminate" Plaintiff from his coaching and athletic director duties at South Oak Cliff High School.

D. Plaintiff would show that thereafter, on or about March 17, 1983, Defendant FREDERICK TODD set forth the purported reasons for his "recommendation" to relieve Plaintiff as athletic director and coach in a letter to Mr. John Kincaid of the Defendant DALLAS INDEPENDENT SCHOOL DISTRICT. Such "reasons" constituted nothing more than a sham, designed to conceal said Defendant's actual racial discrimination. In fact, there was no "good cause" for Plaintiff's termination, demotion, and/or transfer.

E. Plaintiff would show that a further substantial motivation for Defendant FREDERICK TODD's decision to "terminate" and/or "recommend" that Plaintiff be terminated as athletic director and coach of South Oak Cliff High School was Plaintiff's exercise of his protected First Amendment rights of free speech and academic freedom including, but not limited to, Plaintiff's right to speak to members of the news media about events involving athletic teams from South Oak Cliff High School.

F. At the time of the above-described actions, Defendant FREDERICK TODD was acting individually and/or

within the course and scope of his employment as a Principal for the Defendant DALLAS INDEPENDENT SCHOOL DISTRICT.

G. Further, Plaintiff would show that the action of Defendant FREDERICK TODD in firing Plaintiff was ratified and approved by the Defendant DALLAS INDEPENDENT SCHOOL DISTRICT and the BOARD OF TRUSTEES in that the removal of Plaintiff was approved by said Defendants (through those to whom such decisions had been delegated) and Plaintiff was thereafter reassigned with the approval of the Defendants despite his objections to such removal and reassignment.

H. Plaintiff would further show that he was never given written notice of his purported "non-renewal," as head coach/athletic director, by the Defendant BOARD OF TRUSTEES.

V.

A. Immediately upon learning that Defendant FREDERICK TODD had "terminated" him, Plaintiff met with Linus Wright and other duly-authorized officials of the DALLAS INDEPENDENT SCHOOL DISTRICT, who had been delegated with the authority to make decisions on terminations, transfers, and demotions by the BOARD OF TRUSTEES, to protest Defendant TODD's "termination" of Plaintiff as head coach/athletic director. At such meetings, Plaintiff explained the course of harrassment and discrimination conducted by Defendant TODD.

B. Plaintiff was thereafter transferred to a teaching position in a different school, without his athletic director/coaching duties. Subsequently, by letter dated May 5, 1983, Defendants informed Plaintiff that he was being reassigned to a security position within the DALLAS INDEPENDENT SCHOOL DISTRICT, that he was being placed on an unassigned personnel budget and that he could not anticipate any expectation of continued employment in the security department beyond the 1982-1983 school year.

C. Subsequently, Plaintiff was notified that he was being transferred to Thomas Jefferson High School for the

1983-1984 school year without his athletic director duties and that he was being assigned as a social studies teacher/freshman football coach, and junior varsity track coach.

D. Plaintiff would show that, in part, as a result of his exercise of his protected First Amendment right of free speech in protesting and challenging Defendant TODD's wrongful "termination" of Plaintiff as head coach/athletic director, Defendants ratified said "termination," demotion, and transfer, subsequently reassigned Plaintiff three (3) times, and otherwise deliberately made Plaintiff's working conditions so intolerable that Plaintiff was forced to resign by letter dated August 19, 1983, a copy of which is attached hereto as Exhibit "C," and made a part hereof for all purposes. At that point, the working conditions surrounding Mr. Jett's employment were so difficult that a reasonable person in his place would have felt compelled to resign, as he did.

E. Therefore, only after and as a result of Defendants' above-described wrongful, arbitrary, and capricious conduct, which constituted a part of a continuing course of harrassment by Defendants of Plaintiff, Plaintiff "resigned" his employment with Defendant DALLAS INDEPENDENT SCHOOL DISTRICT.

VI.

Plaintiff would show that the above-described conduct of Defendant FREDERICK TODD against Plaintiff, which conduct was ratified and approved by the other Defendants herein, as set forth above, was racially motivated. Plaintiff has a constitutionally protected liberty interest in being free from such racially-motivated conduct and discrimination by the Defendants herein. Accordingly, Defendants have, as a matter of law, deprived Plaintiff of said liberty interest without procedural or substantive due process of law, in contravention of the Constitution of the United States.

VII.

Plaintiff further alleges that Defendants' above-described wrongful conduct is violative of Plaintiff's Fourteenth Amendment right of equal protection in that Defendants have imposed arbitrary and capricious measures on Plaintiff, but not on others similarly situated, without a rational basis or compelling reason for such discrimination.

VIII.

A. Plaintiff would further show that Defendants' above-described conduct wrongfully deprived Plaintiff of his constitutionally protected liberty interests in free speech and academic freedom, and otherwise infringed upon said rights, all without due process of law and in violation of the Fourteenth Amendment to the Constitution of the United States.

B. Plaintiff further alleges that Defendants' above-described conduct and action was taken in retaliation against Plaintiff for his exercise of protected rights of free speech, academic freedom, and free association, in violation of the First Amendment to the Constitution of the United States.

IX.

A. Plaintiff would further show that as a direct and proximate result of the Defendants' above and foregoing conduct, Plaintiff has been unconstitutionally deprived of his property interest in continued employment as an athletic director and football coach, without procedural due process of the law and without substantive due process of the law, in violation of the Fifth and Fourteenth Amendments to the United State Constitution.

B. Plaintiff would further show that Defendants' above-described wrongful conduct was arbitrary and capricious and, therefore, a violation of Plaintiff's right of procedural and substantive due process of law, in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

X.

Plaintiff would further show that Defendants constructively terminated his employment by imposing upon him the aforementioned continuing course of harrassment. If not for such wrongful conduct by Defendants, Plaintiff would still be active in his chosen profession of teaching and would still be employed within the Defendant DALLAS INDEPENDENT SCHOOL DISTRICT. Such constructive termination deprived Plaintiff of his property interest in continued employment and has substantially foreclosed his opportunity to pursue employment opportunities within the DALLAS INDEPENDENT SCHOOL DISTRICT, thereby depriving him of his property and liberty interests in same, all without due process of law.

XI.

Plaintiff would further show that all of the aforementioned conduct of Defendants was taken under the color of law.

XII.

Plaintiff would further show that Defendants' above-described conduct was in direct contravention of Defendants' own written policies, thereby depriving Plaintiff of his property and/or liberty interest in such policies, without due process of law.

XIII.

A. Additionally, Plaintiff would show that Defendants' actions constitute a breach of contract under the laws of the State of Texas for the reason that Plaintiff entered into a contract with Defendants which was partially written and partially oral and, under Texas state law, the removal of Plaintiff from his position of coach and athletic director without good cause during the term of said contract amounts to a breach of said contract. In this connection, Plaintiff says that said breach of contract arises from the same nucleus of operative facts that forms Plaintiff's con-

stitutional claims herein or, in the alternative, is such an integral part thereof so as to attach this Court's pendent jurisdiction.

B. Plaintiff would show that, in addition to his removal from his duties as an athletic director and coach, Plaintiff's "reassignment" from his position as athletic director and coach of South Oak Cliff High School to a job in the security department of the DALLAS INDEPENDENT SCHOOL DISTRICT and then to a position as freshman football coach and junior varsity track coach at Thomas Jefferson High School constitutes a material change in his position of employment and/or a demotion, both of which constitute a deprivation of a protected property and/or a liberty interest and a breach of contract under Texas state law.

C. Pleading in the alternative, should same be necessary, Plaintiff says further that his contract of employment was a "term contract" within the meaning of Section 21.201, Texas Education Code. Plaintiff says that, if Defendant TODD's actions against your Plaintiff comprised nothing more than a "recommendation" of non-renewal, then, in that event, the Defendant BOARD OF TRUSTEES OF THE DALLAS INDEPENDENT SCHOOL DISTRICT wholly failed to give written notice of any purported "non-renewal" to your Plaintiff on or before April 1, 1983. Accordingly, pursuant to Section 21.204(b) Texas Education Code, Plaintiff had been re-employed, both as teacher and as athletic director/coach for the next succeeding school year. Specifically, said provision of the Texas Education Code reads as follows:

In the event of failure to give such notice of proposed non-renewal within the time herein specified, the Board of Trustees shall thereby elect to employ such employee in the same professional capacity for the succeeding school year.

Plaintiff respectfully says that Defendant's action in purporting to terminate and/or to non-renew him as athletic director/coach during the term of his contract and in the manner described herein also constitutes a breach of con-

tract under the laws of the State of Texas and works an unconstitutional deprivation of that additional property interest without due process of law, all in violation of the Fourteenth Amendment to the Constitution of the United States.

XIV.

A. As a direct and proximate result of Defendants' actions, Plaintiff has suffered damages in that he has suffered lost wages and a diminished earning capacity, and damage to his personal and professional reputation, in a sum in excess of \$50,000.00, for which Plaintiff here sues.

B. As a further, direct, and proximate result of Defendants' wrongful deprivation of Plaintiff's rights, Plaintiff has been caused to suffer great mental anguish and/or distress, and in all probability, will continue to suffer such mental anguish and/or distress for an indefinite time in the future, all to Plaintiff's damage in a sum in excess of \$50,000.00, for which Plaintiff here sues.

C. Plaintiff also here sues to recover his reasonable and necessary attorneys' fees, both by virtue of the foregoing facts and by virtue of the "Civil Rights Attorneys Fee Award Act of 1976," 42 U.S.C. §1988, as well as under pertinent Texas statutes.

XV.

A. Plaintiff would show that Defendant FREDERICK TODD, in the above-described wrongful conduct, has acted in bad faith, vexatiously, wantonly, maliciously, and for oppressive reasons, and that said Defendant has acted with the malicious intention to cause Plaintiff a deprivation of his constitutional rights, as alleged above, or with a reckless disregard for Plaintiff's rights.

B. Plaintiff would further show that Defendant FREDERICK TODD knew or should have known that his above-described wrongful conduct would violate Plaintiff's rights, as alleged above. Accordingly, Defendant is liable to Plaintiff, both in his individual and official capacities. Additionally, for the foregoing reasons, Plaintiff is entitled to

recover exemplary damages from Defendant FREDERICK TODD in a sum in excess of \$50,000.00, for which Plaintiff here sues.

XVI.

Plaintiff would further show that his reasonable and necessary attorney's fees incurred in connection with this cause will be in the sum of \$100,000.00; that the sum of \$25,000.00 should be credited should this cause not be appealed to the Fifth Circuit Court of Appeals from one trial hereof; and that additional attorneys' fees in the sum of \$25,000.00 should be credited should proceedings not be had before the United States Supreme Court in connection with this cause. Accordingly, Plaintiff says that such attorneys' fees are and will be reasonable and necessary, and Plaintiff here sues to recover same against all Defendants in their respective capacities.

XVII.

Plaintiff respectfully demands trial by Jury.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that he have judgment of and against Defendants, both jointly and severally, in their respective capacities for his damages, including his lost wages and diminished earning capacity; for his mental anguish and/or distress; for damage to his professional and personal reputation; for his reasonable and necessary attorneys' fees; and further that Plaintiff have judgment against Defendant FREDERICK TODD individually for Plaintiff's exemplary damages; for costs of court; and for such other and further relief, both general and special, at law and in equity, to which Plaintiff may show himself justly entitled.

Respectfully submitted,

HILL, HEARD, ONEAL,
GILSTRAP & GOETZ
1400 West Abram Street
Arlington, Texas 76013
(817) 261-2222

By: /s/ Frank Hill
FRANK HILL
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By: /s/ Shane Goetz
SHANE GOETZ
State Bar No. 08059400

By: /s/ Michael A. Rossetti
MICHAEL A. ROSSETTI
State Bar No. 17309200
ATTORNEYS FOR PLAINTIFF

(Certificate of Service omitted in printing)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

NORMAN JETT)
VS.) CA 3-83-0824-H
DALLAS INDEPENDENT SCHOOL)
DISTRICT, ET AL.)

CONSENT TO AMENDED PLEADING

I. J. Carlisle DeHay, Jr., attorney of record for Defendants in the above-referenced cause, consent to NORMAN JETT amending his Complaint against Defendants as provided by Rule 15(a) of the Federal Rules of Civil Procedure.

DeHAY & BLANCHARD
2300 South Tower
Plaza of the Americas
Dallas, Texas 75201-2880
(214) 651-7000

By: /s/ J. Carlisle DeHay, Jr.
J. CARLISLE DeHAY, JR.
State Bar No. 05644000
ATTORNEYS FOR DEFENDANTS

Exhibit "A"

STATE OF TEXAS

COUNTY OF DALLAS

Date: 03/14/79

DALLAS INDEPENDENT SCHOOL DISTRICT
School Administration Building 3807 Ross Avenue
Dallas, Texas 75204

NORMAN R. JETT
456-44-5684

TEACHER CONTRACT
(Five-Year)

1. The Dallas Independent School District, hereafter called District, acting through the General Superintendent of Schools, hereby agrees to employ the undersigned teacher and the undersigned teacher hereby agrees to be employed by the District as a teacher subject to assignment commencing on the 1st day of Scholastic Yr. 1979 for the term of five (5) consecutive scholastic years thereafter subject to all the terms and provisions enumerated both below and in the District's Personnel Guide now in force and hereafter promulgated.
2. The District agrees to pay to the teacher for all the services rendered under this contract a salary at the annual rate as fixed by the Schedule of Teachers salaries as adopted by the Board of Education, which annual salary will be paid in twelve monthly installments.
3. The General Superintendent shall have the right to assign the teacher to such school as he may determine, and may from time to time assign or reassign the teacher to other schools. The teacher agrees to perform his/her duties as a teacher and at all times to carry out the orders and procedures of the Principal of the school to which he/she is assigned in conformity with the Board Policies and Administrative Policies and Procedures. If the teacher shall fail, refuse or be unable to perform his/her obligations here undertaken, this contract may be terminated by the District in accordance with the

Exhibit "B"

rules and procedures of the Board of Education now in force or hereafter promulgated.

4. On or before April 1 of each scholastic year of this contract, the teacher shall be subject to a performance evaluation by the District. Such performance evaluation shall be conducted pursuant to the rules and procedures of the District now in force or hereafter promulgated.
5. All contracts of employment shall be subject to any necessary reduction of school personnel. This contract may be terminated by the District in the event that any necessary reduction of school personnel may be required.
6. This contract is subject to available funds and subsequent salary schedules and such other adjustments in duration and rate of compensation as determined by the Board of Education to be necessary for the District to operate within the budget therefor.
7. This contract of employment is a binding contract and may not be terminated by the teacher without written District approval. The teacher may make written request to the Assistant Superintendent - Personnel for termination of this contract, however, this contract may not be terminated unless agreed to in writing by the Assistant Superintendent - Personnel. On or before July 1 preceding an ensuing scholastic year, the District will consider any request by the teacher for termination based on reasonable circumstances. However, after July 1, preceding an ensuing scholastic year and during said scholastic year, the District will only consider requests by the teacher for termination based on exceptional and unusual circumstances. If the Assistant Superintendent - Personnel does not agree in writing to terminate this contract, any resignation or other termination of this contract by the teacher will result in the District's recommendation to the State Commissioner of Education that the teacher's certificate be suspended and that the teacher be prohibited from employment by any

other school district in the State of Texas for one complete scholastic year.

Signed this 14th day of MARCH, 1979

DALLAS INDEPENDENT SCHOOL DISTRICT

/s/ Linus Wright
General Superintendent

/s/ Norman Jett
Teacher

Norman Jett
Rt. 6, Box 456
Kemp, Tx. 75143
S-19-83

Linus Wright
Superintendent of Schools
Dallas Independent Schools District

Dear Mr. Wright,

After considering my assignment as Social Studies Teacher/freshman football coach, and Junior Varsity track coach at the Thomas Jefferson High School, without the principal or Head Coach-Atheletic Director's knowledge, I have decided that accepting the position would cause too much friction in my life and the Thomas Jefferson situation. I have therefore made decision. I feel forced to resign from the public education field with much sorrow and humiliation. Please accept my resignation.

Sincerely,
/s/Norman Jett

Exhibit "C"

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

NORMAN JETT)
VS.) CIVIL ACTION NO.
DALLAS INDEPENDENT) CA3-83-0824-H
SCHOOL DISTRICT, ET AL)

DEFENDANTS' FIRST AMENDED ANSWER

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Come Now the Defendants, DALLAS INDEPENDENT SCHOOL DISTRICT; FREDERICK TODD, Individually and in his official capacity as Principal for South Oak Cliff High School of the Dallas Independent School District; THE BOARD OF TRUSTEES OF THE DALLAS INDEPENDENT SCHOOL DISTRICT; and LEONARD CLEGG, KATHLYN GILLIAM, ROBERT MEDRANO, ROBERT HESTER, RICHARD CURRY, HOWARD DRIGERS, DUANE JARVIS, JOHN MARTIN and MARY RUTHLEDGE, all in their official capacities as members of the Board of Trustees of the Dallas Independent School District, and subject to their Motion to Dismiss herein file this their First Amended Answer to the Plaintiff's First Amended Complaint, respectfully showing to the Court the following:

I.

Defendants admit Plaintiff makes the jurisdictional allegations but denies them.

II.

A. Defendants admit the allegations in Paragraph II A.
B. Defendants admit the allegations in Paragraph II B.

C. Defendants admit the Plaintiff has sued the Defendant, Frederick Todd, in his individual and official capacity.

D. Defendants admit the allegations in Paragraph III.D.

E. Defendants admit that the Plaintiff has sued the members of the School Board in their official capacities.

III.

A. Defendants admit that Plaintiff was a teacher and coach, and was certified to teach but deny that Plaintiff had a special certificate or contract as a coach.

B. Defendants admit that Plaintiff had been employed under a written contract as a teacher, and has also served as a coach and athletic director at South Oak Cliff High School for the period stated, but deny that Plaintiff had a continuing contract to serve as head football coach and athletic director at South Oak Cliff High School.

C. Defendants admit that the document attached as Exhibit "D" to the First Amended Complaint is a true copy of Plaintiff's five year written contract to serve as a teacher beginning with the 1979-80 school year, but deny that Plaintiff had a contract to serve as a coach and athletic director for a five year term as is alleged in Paragraph III.C.

D. Defendants admit that the five year contract was a teaching contract, but Defendants deny that Plaintiff had a five year contract to serve as head football coach and athletic director as alleged in Paragraph III.D.

E. Defendants deny the allegations in Paragraph III.E.

IV.

A. Defendants deny the allegations in Paragraph IV.A.

B. Defendants deny the allegations in Paragraph IV.B.

C. Defendants do not deny a meeting on or about such date in which the Defendant Todd indicated he was going to recommend the Plaintiff's reassignment, but the Defendants' deny the remaining allegations in Paragraph IV.C.

D. Defendants admit the allegations in the first sentence of Paragraph IV.D but deny the remaining allegations in Paragraph IV.D.

E. Defendants deny the allegations in Paragraph IVE.

F. Defendants admit that Defendant Frederick Todd was acting in the course and scope of employment, but deny the allegations of the Plaintiff attributed to the Defendant Todd.

G. Defendants deny the allegations in Paragraph IV.G.

H. Defendants admit that Plaintiff was not furnished a written notice of nonrenewal by the Board of Trustees, but deny that the Plaintiff was entitled to such written notice as is alleged in Paragraph IV.H.

V.

A. Defendants admit that the Plaintiff met with Mr. Wright and other officials of the DISD, but Defendants deny the remaining allegations in the first sentence of Paragraph VA. The Defendants deny that the Plaintiff complained of racial discrimination in such meetings, but otherwise admit the second sentence of Paragraph VA.

B. Defendants admit the allegations in Paragraph VB.

C. Defendants admit the allegations in Paragraph VC.

D. Defendants admit that the Plaintiff resigned by letter dated August 19, 1983, a true copy of which is attached as Exhibit "C" in Plaintiff's First Amended Complaint, but otherwise deny the allegations in Paragraph VD.

E. Defendants deny the allegations in Paragraph VE.

VI.

Defendants deny the allegations in Paragraph VI.

VII.

Defendants deny the allegations in Paragraph VII.

VIII.

A. Defendants deny the allegations in Paragraph VIII.A.

B. Defendants deny the allegations in Paragraph VIII.B.

IX.

A. Defendants deny the allegations in Paragraph IX.A.

B. Defendants deny the allegations in Paragraph IX.B.

X.

Defendants deny the allegations in Paragraph X.

XI.

Defendants deny the allegations in Paragraph XI.

XII.

Defendants deny the allegations in Paragraph XII.

XIII.

A. Defendants deny the allegations in Paragraph XIII A.

B. Defendants deny the allegations in Paragraph XIII B.

C. Defendants deny the allegations in Paragraph XIII C.

XIV.

A. Defendants deny the allegations in Paragraph XIV A.

B. Defendants deny the allegations in Paragraph XIV B.

C. Defendants deny the allegations in Paragraph XIV C.

XV.

A. Defendants deny the allegations in Paragraph XV A.

B. Defendants deny the allegations in Paragraph XV B.

XVI.

Defendants deny the allegations in Paragraph XVI.

XVII.

Defendants join in the request for a jury trial.

XVIII.

Defendants deny that Plaintiff is entitled to recover as set forth in the prayer of Plaintiff's First Amended Complaint.

XIX.

Further answering, Defendants allege that Plaintiff had a five year teaching contract signed on or about March 19, 1979 to commence on the first scholastic year in 1979 and this contact was not terminated by the Defendants, but by his resignation letter of August 19, 1983 (Exhibit "C" to the Plaintiff's First Amended Complaint), the Plaintiff voluntarily resigned and waived any rights under this contract and thereby terminated the contract. Defendants deny that Plaintiff had a special contract to be coach/athletic director.

XX.

Further answering, Defendants specially deny that Plaintiff has had any alteration in his "liberty" status as a school district employee, or that he has had any alteration in any "property" interest which would require due notice and hearing, and would show that there is no continued expectation of employment as a coach and/or athletic director as his contract is for a teaching position which was in effect until his resignation and waiver.

XXI.

Further answering, Defendants specially deny that Plaintiff's reassignment was racially motivated or motivated by an intent to retaliate for an exercise of protected First Amendment rights.

XXII.

Further answering, Defendants invoke the qualified immunity defense and contend that any actions taken were taken and performed in good faith.

XXIII.

Further answering, Defendants plead the applicable statute of fraud.

XXIV.

Defendants allege that any damages, if any, sustained by Plaintiff were proximately caused by his own actions and conduct.

XXV.

Further answering, Defendants allege that in approximately late March of 1983 the Plaintiff was reassigned by the Defendant, Linus Wright, to the business magnet school and the Plaintiff accepted that assignment, however, after numerous absences, the Plaintiff agreed to accept a reassignment in a security position for the balance of the Spring Semester, 1983. In August of 1983 the Plaintiff was re-

assigned to Thomas Jefferson High School for the remaining one year on his contract, however, by letter dated August 19, 1983 the Plaintiff tendered his resignation from employment with the Dallas Independent School District, which amounts to a voluntary waiver and has rendered the issues in controversy moot.

WHEREFORE, PREMISES CONSIDERED, the Defendants pray that the Plaintiff take nothing, and that the Defendants recover their court costs and for such other and further relief, general and special, at law or in equity, to which they may show themselves justly entitled.

Respectfully submitted,

J. Carlisle DeHay, Jr.

/s/ J. CARLISLE DeHAY, JR.
David W. Townsend
Plaza of the Americas
2300 South Tower
Dallas, Texas 75201
214-651-7000

ATTORNEY FOR DEFENDANTS

(Certificate of Service omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

NORMAN JETT)

v. Plaintiff)

)

DALLAS INDEPENDENT)
SCHOOL DISTRICT, et al)

Defendants)

) Civil Action
No. 3-83-0824-H

COURT'S CHARGE TO THE JURY
(Prior to Argument)

MEMBERS OF THE JURY:

Now that you have heard the evidence, it is my duty to instruct you as to the law that is applicable to this case. At this time I will instruct you regarding the law that you should apply in answering certain questions of fact in the case, and I will ready to you those questions.

Then counsel will have the opportunity to make their closing arguments. You are instructed that the statements and arguments of counsel are not evidence. They are only intended to assist the jury in understanding the evidence and the contentions of the parties to this suit.

After the closing arguments, I will give you some additional instructions, after which you will retire to commence your deliberations.

Plaintiff's Contentions

Plaintiff Norman Jett contends that he was terminated from his employment as head coach and athletic director at

South Oak Cliff High School by Defendant Dallas Independent School District upon the recommendation of Defendant Frederick Todd in March 1983 without good cause and without notice and a hearing, in violation of his constitutional rights to due process. He also contends that the decision to terminate him was made, in part, on the basis of his race, statements he made to the press and because of the exercise of his academic freedom in the choice of a "game plan", all in violation of his constitutional rights. He further contends that he was constructively discharged from employment with the Dallas Independent School District in August 1983.

Plaintiff is seeking the recovery of damages for the violation of his constitutional rights, mental anguish, lost earnings and damage to reputation.

Defendants' Contentions

Defendants contend that Plaintiff was employed as a teacher subject to assignment and had no property interest in his position as head coach and athletic director, and thus was not entitled to constitutional protections upon his reassignment. Defendants also contend that their decisions were not based on Plaintiff's race, free speech or exercise of academic freedom, and were made in consultation with and concern for Plaintiff. Finally, Defendants contend that Plaintiff voluntarily resigned from his employment with the Dallas Independent School District in August 1983.

Instructions

Unless I instruct you otherwise, the Plaintiff has the burden of proof by the preponderance of the evidence on every element of the case. "Preponderance of the evidence" means the greater weight and degree of credible evidence. Preponderance of the evidence does not require proof to an absolute certainty, because such a degree of proof is seldom possible. It is evidence which satisfies the conscience and brings conviction to an intelligent mind.

A public independent school district (such as and including the Dallas Independent School District), acts by and through its Board of Trustees and/or its delegated administrative officials (including the Superintendent and school principals), with regard to action taken against or concerning school district personnel.

A public independent school district (such as and including the Dallas Independent School District) is liable for the actions of its Board of Trustees and/or its delegated administrative officials (including the Superintendent and school principals), with regard to wrongful or unconstitutional action taken against or concerning school district personnel.

Procedural Due Process

Under a federal statute, 42 U.S.C. § 1983, any citizen may bring suit for monetary damages against any other person or entity who, under color of state law, deprives such a citizen of any constitutional rights. Among these rights is the right not to be deprived of one's liberty or property without due process of law.

To find that Defendants deprived Plaintiff of his constitutional right to due process, you must find that from a preponderance of the evidence Plaintiff possessed what the law recognizes as a "property interest" in his position as head coach and athletic director at South Oak Cliff High School.

A property interest may arise from a contract between the parties on the subject. Such a contract may be based on mutually explicit understandings between the parties, written or oral, that Plaintiff would continue to be employed as head coach and athletic director for a specified period of time. The mere unilateral expectation on Plaintiff's part of continued employment as head coach and athletic director is insufficient to establish a property interest.

A property interest may also arise from explicit internal procedures that provide that an employee will not be removed from a given position except "for cause".

If you find by a preponderance of the evidence that Plaintiff had a property interest in his employment as head coach and athletic director, you must determine whether Defendants deprived him of that property interest without due process of law.

A transfer to a position in which the employee receives less pay or has less responsibility than in the previous assignment or which requires a lesser degree of skill can constitute a deprivation of a property interest. You are instructed that due process of law requires, in the case of the deprivation of a property interest in employment, that the employee receive written notice of the cause or causes for his removal in sufficient detail to fairly enable him to show any error and an effective opportunity to rebut those reasons. Effective rebuttal means that the employee is given the right to respond in writing to the charges made and to respond orally before the official charged with the responsibility of making the termination decision.

A constitutional right to due process procedures can be waived by the person entitled to them. A waiver occurs when there is a voluntary and intentional giving up of a known right.

QUESTION NO. 1

Do you find, by a preponderance of the evidence, that Plaintiff Norman Jett possessed a property interest in his employment as head coach and athletic director at South Oak Cliff High School?

Check only one answer:

"Did possess a property interest"

"Did not possess a property interest" _____

If you answered this question "Did possess a property interest", go to Question No. 2. If you answered "Did not possess a property interest", go to Page 10.

QUESTION NO. 2

Do you find by a preponderance of the evidence that Plaintiff waived his right to due process procedures?

Check only one answer:

- "Did waive his right" _____
"Did not waive his right"

If you answered this question "Did waive his right", go to Page 10. If you answered this question "Did not waive his right", go to Question No. 3.

QUESTION NO. 3

Do you find by a preponderance of the evidence that Defendant Dallas Independent School District ("DISD") deprived Plaintiff of his property interest in employment as head coach and athletic director without due process of law?

Check only one answer:

- "Did deprive Plaintiff"
"Did not deprive Plaintiff" _____

Go on to Page 10.

Equal Protection

Defendant Dallas Independent School District ("DISD"), as a branch of the state, is prohibited by the equal protection clause of the Fourteenth Amendment of the United States Constitution from discriminating among employees wholly or partially on the basis of his race, unless such discrimination substantially furthers a compelling interest of the District. This prohibition extends to actions taken by agents and employees of DISD motivated by consideration of race.

QUESTION NO. 4

Do you find, by a preponderance of the evidence, that Defendant Todd's recommendation that Plaintiff be removed as head coach and athletic director was based in whole or in part on Plaintiff's race?

Check only one answer:

"Todd's recommendation was based in whole or in part on Plaintiff's race"

"Todd's recommendation was not based in whole or in part on Plaintiff's race" _____

If you answered this question "Was based", go to Question No. 5. If you answered "Was not based", go to Page 16.

QUESTION NO. 5

Do you find from a preponderance of the evidence that Defendant Todd's recommendation to remove Plaintiff from the position as head coach and athletic director would have been made, for some other valid reason, even in the absence of any consideration of Plaintiff's race?

On this issue Defendants have the burden of proof.

Check only one answer:

"Would have been made" _____

"Would not have been made" _____

If you answered this question "Would have been made", go to Page 16. If you answered "Would not have been made", go to Page 13.

**Liability of Defendant DISD for Violation
of Constitutional Rights Based on Race Discrimination**

If you find that Defendant Todd's recommendation was based upon consideration of Plaintiff's race, and would not have been made in the absence of the consideration of Plaintiff's race, Defendant DISD may be liable for violating Plaintiff's constitutional rights if the decision to remove Plaintiff was made solely on the basis of Defendant Todd's recommendation without any independent investigation.

QUESTION NO. 6

Do you find, from a preponderance of the evidence, that Defendant DISD's action in removing Plaintiff as head coach and athletic director was based solely on Defendant Todd's recommendation without any independent investigation?

Check only one answer:

"Was based solely on Defendant Todd's recommendation"

"Was not based solely on Defendant Todd's recommendation" _____

If you answered this question "Was based solely", go to Question No. 7. If you answered "Was not based solely", go to Page 16.

QUESTION NO. 7

Do you find from a preponderance of the evidence that Defendant DISD's action in removing Plaintiff from the position as head coach and athletic director would have been taken, for some other valid reason, even in the absence of any consideration of Plaintiff's race?

On this issue Defendants have the burden of proof.

Check only one answer:

"Would have been taken" _____

"Would not have been taken"

Go to Page 16.

Free Speech

The First Amendment to the United States Constitution protects citizens from any adverse action being taken against them on the basis of the exercise of the right of free speech.

The right to free speech includes the right to speak in public and to the press on matters of public concern. The First Amendment has also been interpreted to protect against infringement upon a teacher's freedom concerning teaching techniques and methods. A public school teacher has a right not to be discharged, demoted or punished for the use of a teaching method not prohibited by a regulation, and as to which it is not shown that the teacher should have known that its use was prohibited. Plaintiff contends that he was removed as athletic director and head coach in part because of the coaching strategy or "game plan" employed in the Plano game.

If you find that Defendants' action in recommending to remove and/or removing Plaintiff from his position as head coach and athletic director was substantially motivated by any statements made to the press, or by Plaintiff's exercise of academic freedom, and Defendants' action would not have been taken anyway for some other valid reasons unrelated to his statements, Defendants have violated Plaintiff's First Amendment rights to free speech.

QUESTION NO. 8

Do you find, from a preponderance of the evidence, that Plaintiff's exercise of his First Amendment rights was a substantial motivating factor in Defendant Todd's recommendation that Plaintiff be removed as head coach and athletic director?

Check only one answer:

"Was a substantial motivating factor"

"Was not a substantial motivating factor"

If you answered this question "Was a substantial motivating factor", go to Question No. 9. If you answered "Was not a substantial motivating factor", go to Page 22.

QUESTION NO. 9

Do you find, from a preponderance of the evidence, that Defendant Todd's action in recommending the removal of Plaintiff as head coach and athletic director would have been taken, for some other valid reason, even in the absence of any consideration of Plaintiff's exercise of first amendment rights?

On this issue Defendants have the burden of proof.

Check only one answer:

"Would have been taken" _____

"Would not have been taken" _____

If you answered this question "Would have been taken", go to Page 22. If you answered "Would not have been taken", go to Page 19.

Liability of Defendant DISD for Violation of Constitutional Rights of Free Speech

If you find that Plaintiff's exercise of first amendment rights was a substantial motivating factor in Defendant Todd's recommendation, and that his recommendation would not have been made, for some other valid reason, in the absence of the exercise of these rights, Defendant DISD may be liable for violating Plaintiff's constitutional rights if the decision to remove Plaintiff was made solely on the basis of Defendant Todd's recommendation without any independent investigation.

QUESTION NO. 10

Do you find, from a preponderance of the evidence, that Defendant DISD's action in removing Plaintiff as head coach and athletic director was based solely on Defendant Todd's recommendation without any independent investigation?

Check only one answer:

"Was based solely" _____

"Was not based solely" _____

If you answered this question "Was based solely", go to Question No. 11. If you answered "Was not based solely", go to Page 22.

QUESTION NO. 11

Do you find, from a preponderance of the evidence, that Defendants' action in removing Plaintiff as head coach and athletic director would have been taken, for some other valid reason, even in the absence of any consideration of Plaintiff's exercise of First Amendment rights?

On this issue Defendants have the burden of proof.

Check only one answer:

"Would have been taken" _____

"Would not have been taken" _____

Go to Page 22.

Instructions and Definitions/Damages

It is your duty as the judges of the facts to determine the amount of money, if any, that would compensate Plaintiff Norman Jett for any damages proximately caused by violation of constitutional rights by Defendants.

In considering the issue of Plaintiff's compensatory damages, you are instructed that you should assess the amount you find to be justified by a preponderance of the evidence as full, just and reasonable compensation for all of the Plaintiff's damages, no more and no less. Compensatory damages are not allowed as a punishment and cannot be imposed or increased to penalize the Defendant.

"Proximate cause" means that cause which, in a natural and continuous sequence produces a result, and without which cause such result would not have occurred; and in order to be a proximate cause, the act complained of must be such that a person using ordinary care would have foreseen that the result, or similar result, might reasonably result therefrom. There may be more than one proximate cause of any event.

Your assessment of damages cannot be based on speculation; that is to say, you are not permitted to include in your assessment compensation for damages which, although possible, are remote or conjectural.

On the other hand, compensatory damages are not restricted to actual loss of time or money; they include both the mental and physical aspects of injury — tangible and intangible. They are an attempt to restore the Plaintiff, that is, to make him whole or as he would be had there been no violation, if any, of his rights.

In answering the following question, you may consider the following elements of injury:

- (1) Any mental anguish suffered by Plaintiff proximately caused by the violation of constitutional rights;
- (2) Any lost earnings;
- (3) Any damage to Plaintiff's professional reputation, and/or diminished earning capacity as a

teacher/coach which he has suffered proximately caused by the violation of constitutional rights.

The term "mental anguish" implies a relatively high degree of mental pain and distress. It is more than mere disappointment, anger, resentment, or embarrassment, although it may include all of these. It includes a mental sensation of pain resulting from such painful emotions as grief, severe disappointment, indignation, wounded pride, shame, despair, and/or public humiliation. Mental anguish may manifest itself in physical symptoms such as hyper-activity, distractability, loss of weight, headaches, and loss of sleep.

The burden is upon Plaintiff to prove every essential element of his compensatory damage claims by a preponderance of the evidence.

Some of the items of damages, such as mental anguish, are not capable of exact measurement and there is no fixed rule for determining the proper amount of these items. Any sum awarded must be based upon the evidence presented at trial. However, because compensation for such items is not capable of exact measurement, the law leaves the amount to your sound discretion.

In connection with lost earnings, it is the duty of any person who has been injured to use reasonable diligence and reasonable means in order to reduce the amount of damages sustained by that person. In assessing any damages suffered by Plaintiff, you should account for any amounts that Plaintiff has, will or should be able to reduce or offset through reasonable diligence and reasonable means. In this connection, you are instructed that it is the Defendants' burden to prove any failure by Plaintiff to use such reasonable diligence and reasonable means.

If you find that Defendants have violated any of Plaintiff's constitutional rights, but do not find that Plaintiff has sustained any damage or injury as a result, you must, and are instructed to, award Plaintiff "nominal damages" in the amount of \$1.00 in recognition of the violation of his rights.

Liability of Frederick Todd

Plaintiff has sued Defendant Frederick Todd as an individual, as well as in his capacity acting as an official of the Dallas Independent School District.

You are instructed that Defendant Todd is not liable in his individual capacity for any damages you find that Plaintiff has suffered as a result of wrongful or unconstitutional actions, if any, by Defendant Todd if you find that Defendant Todd acted in good faith. Good faith means that Defendant did not know or reasonably should not have known that the action he took would violate the constitutional rights of Plaintiff. The burden is on Defendant Todd to show, by a preponderance of the evidence, that he acted in good faith.

You are instructed, however, this "good faith defense" is only applicable to the part of this suit seeking damages from Defendant Todd in his individual capacity. Defendant Dallas Independent School District is liable for any damages sustained by Plaintiff as a result of any constitutional violations resulting from its actions, regardless of any good faith.

QUESTION NO. 12

Did Defendant Todd prove by a preponderance of the evidence that the actions that he took with regard to his recommendation concerning Plaintiff were in good faith?

Check only one answer:

"Defendant Todd did prove" _____

"Defendant Todd did not prove" _____

If you answered this question "Did prove", go to Question No. 15. If you answered "Did not prove", go to Question No. 13.

Actual Damages Against Defendant Todd**QUESTION NO. 13**

What amount of money, if any, if paid now in cash, do you find from a preponderance of the evidence would fairly and adequately compensate Plaintiff for his damages sustained proximately caused by Defendant Todd's actions? Answer in dollars and cents, if any.

Answer: \$150,000.00

Go to next page.

Punitive Damages

In addition to compensatory damages, the law permits, under certain circumstances, to award the injured person punitive damages, in order to punish the wrongdoer for some extraordinary misconduct, and to serve as an example or warning to others not to engage in such conduct.

If you find from a preponderance of the evidence, that Defendant Todd's acts were done maliciously, wantonly or oppressively, the jury may add to the award of compensatory damages such amount as the jury deems proper as punitive damages.

An act is "maliciously" done if prompted or accompanied by ill will, or spite, or grudge. An act is "wantonly" done if done in reckless or callous disregard of, or indifference to, the rights of a person. An act is "oppressively" done if done in a way which violates the rights of another with unnecessary harshness or severity, as by misuse or abuse of authority or power, or by taking advantage of some weakness of another person.

Punitive damages should only be awarded in these circumstances, and not because of any bias against or sympathy to any party.

Punitive Damages Against Defendant Todd**QUESTION NO. 14**

What amount of money, if any, if paid now in cash, do you find from a preponderance of the evidence should be awarded to Plaintiff as punitive damages against Defendant Frederick Todd for any violation of constitutional rights in a malicious, wanton or oppressive manner? Answer in dollars and cents, if any.

Answer: \$ 50,000.00

Go to next page.

Damages Against Defendant DISD**QUESTION NO. 15**

What amount of money, if any, if paid now in cash, do you find from a preponderance of the evidence would fairly and adequately compensate Plaintiff for his damages sustained UNTIL the date of August 20, 1983, proximately caused by Defendant Dallas Independent School District's actions? Answer in dollars and cents, if any.

Answer: \$250,000.00

Go to next page.

Constructive Termination

Plaintiff alleges that his resignation from the employment of the Dallas Independent School District was a constructive termination. In this connection you are instructed that, where the employer creates working conditions that are so intolerable that, from an objective standpoint, a reasonable person in the employee's shoes would feel compelled to resign, constructive termination occurs. If, on the other hand, you find that Plaintiff voluntarily resigned his position, no constructive termination exists.

QUESTION NO. 16

Do you find from a preponderance of the evidence that Plaintiff was constructively terminated from his employment with the Dallas Independent School District in August 1983?

Check only one answer?

"Was constructively terminated"

"Was not constructively terminated" _____

QUESTION NO. 17

What amount of money, if any, if paid now in cash, do you find from a preponderance of the evidence would fairly and adequately compensate Plaintiff for his damages sustained ON AND AFTER the date of August 20, 1983, proximately caused by Defendant DISD's actions? Answer in dollars and cents, if any.

Answer: \$400,000.00

COURT'S CHARGE TO THE JURY

(After Argument)

MEMBERS OF THE JURY:

In arriving at your verdict, it is your duty to follow the rules of law which I give to you and to find the facts of this case from the evidence introduced at the trial and in accordance with these rules of law.

You are not to single out one instruction alone as stating the law, but you must consider the instructions as a whole.

You should not consider or be influenced by the fact that during the trial of this case, counsel have made objections to the testimony, as it is their duty to do so, and it is the duty of the Court to rule on those objections in accordance with the law.

It is the function of the jury to determine the credibility of each witness and to determine the weight to be given the witness' testimony. Consider all of the circumstances under which the witness testified; the interest, if any, the witness has in the outcome of the case; the witness' appearance and demeanor while on the witness stand; the witness' apparent candor and fairness, or the lack thereof; the reasonableness or unreasonableness of the witness' testimony; and the extent to which the witness is contradicted or supported by other credible evidence. You will rely on your own good judgment and common sense in considering the evidence and determining the weight to be given it.

A witness may be discredited or "impeached" by contradictory evidence, by showing that he has testified differently concerning a material matter, or by evidence that at some other time the witness has said or done something which is inconsistent with the witness' present testimony.

If you believe that any witness has been so impeached, then it is your exclusive province to give the testimony of that witness such credibility or weight, if any, as you may think it deserves.

The testimony of a single witness, which produces in your minds the belief in the likelihood of truth, is sufficient for the proof of any fact, even though a greater number of witnesses may have testified to the contrary, if you believe this witness and have considered all the other evidence.

Generally speaking, there are two types of evidence which a jury may consider in properly finding the truth as to the facts in this case. One is direct evidence — such as testimony of an eye witness. The other is indirect or circumstantial evidence — the proof of a chain of circumstances which points to the existence or non-existence of certain facts. As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that the jury find the facts from a preponderance of all the evidence, both direct and circumstantial.

During the trial of this case, certain testimony has been read to you by way of deposition, consisting of sworn answers to questions asked of the witness in advance of the trial by the attorneys for the parties to the case. Such testimony is entitled to the same consideration and is to be judged as to credibility, and weighed, as if the witness had given from the witness stand the same testimony as given in the deposition.

In this case you have heard opinion testimony. You have heard testimony from persons we call "expert witnesses". These are witnesses who, by education and experience, have become expert in some art, science, profession or calling. Expert witnesses may state their opinions on relevant and material matters on which they are expert and they may also state the reasons for their opinions. You have also heard opinions from witnesses who are not testifying as experts, about matters which the witnesses have personally observed, and as to which the witnesses have personal knowledge or personal experience.

It is for you to consider all the opinion testimony and give it the weight you think it deserves. If you should conclude an opinion is not sound, or if you feel that an opinion is outweighed by other evidence, you may disregard the opinion entirely.

While you should consider only the evidence in the

case, you are permitted to draw reasonable inferences and deductions from the evidence. The word "infer" — or the expression "to draw an inference" means to find that a fact exists based on proof of another fact. An inference may be drawn only if it is reasonable and logical, not if it is speculative. Therefore, in deciding whether to draw an inference, you must consider all the facts in the light of reason, common sense, and experience. After you have done that, the question whether to draw a particular inference is for you to decide.

The parties to this litigation must be treated exactly alike insofar as their rights are concerned. This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life. A school district is entitled to the same fair trial as a private individual. All persons, including school districts, stand equal before the law, and are to be dealt with as equals in a court of justice.

You are the sole and exclusive judges of the facts. You should determine these facts without any bias, prejudice, sympathy, fear, or favor, and this determination should be made from a fair consideration of all the evidence that you have seen and heard in this trial. Do not speculate on matters which are not in evidence. Keep constantly in mind that it would be a violation of your sworn duty to base a verdict upon anything but the evidence in the case. Your answers and verdict must be unanimous; that is, all of you must agree to each of your answers. You will carefully and impartially consider all the evidence in the case, follow the law as stated by the court, and reach a just verdict, regardless of the consequences.

You will now return to the jury room. In a few minutes I will send to you this charge and the exhibits which the Court has admitted into evidence. After you receive the charge and exhibits from the Court, you should select your foreperson and commence your deliberations.

If during the course of your deliberations you wish to communicate with the Court, you should do so only in writing by a note handed to the deputy marshal and signed

by the foreperson. During your deliberations you will set your own work schedule, deciding for yourselves when and how frequently you wish to recess and for how long.

After you have reached your verdict, you will return this charge together with your written answers to the foregoing questions. Do not reveal your answers until such time as you are discharged, unless otherwise directed by me.

Your foreperson will sign in the space provided below after you have reached your verdict.

BAREFOOT SANDERS
UNITED STATES DISTRICT JUDGE

Date: October _____, 1984.

VERDICT OF THE JURY

We, the jury, have answered the above and foregoing questions as indicated, and herewith return the same into Court as our verdict.

FOREPERSON

Dated: October _____, 1984

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

NORMAN JETT) No. CA3-83-824-H
)
Plaintiff) Dallas, Texas
	October 9, 1984
VS.) 9:00 O'clock A.M.
)
DALLAS INDEPENDENT SCHOOL))
DISTRICT, ET AL)
)
Defendants)

TRANSCRIPT OF PROCEEDINGS
JURY TRIAL
BEFORE THE HONORABLE BAREFOOT SANDERS
APPEARANCES:

For the Plaintiff: Hill, Heard, Oneal, Gilstrap & Goetz
BY: FRANK HILL
MICHAEL A. ROSSETTI
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Arlington, Texas 76013

For the Defendants: DeHay & Blanchard
BY: J. CARLISLE DEHAY, JR.
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2300 South Tower
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Dallas, Texas 75201

Court Reporter: Carl T. Black
P.O. Box 501032
Dallas, Texas 75250

TESTIMONY OF DALLAS ISD
SUPERINTENDENT LINUS WRIGHT

[p. 381]

Q. Please state your name, sir.

A. Linus Wright.

Q. Mr. Wright, are you the Superintendent of the Dallas Independent School District?

A. Yes, sir, I am.

[pp. 381-382]

Q. Mr. Wright, is it part of your job as Superintendent to be familiar with the policies and rules, regulations and customs of the Dallas Independent School District?

A. Yes, sir.

Q. And with particular reference to employment policies, sir?

A. Yes, sir.

Q. You are the Chief Executive Officer of the School District, are you not?

A. I am.

[pp. 382-383]

Q. And you didn't have any direct dealings with Mr. Jett or with Mr. Todd concerning the matters that we are here about and that is the removal from the Athletic Directorship and Head Coach job until this matter came to a head on or about March the 15th, 1983, did you sir?

A. That is correct.

Q. You didn't have any prior knowledge of any problems? You just weren't involved until that time?

A. That is correct.

Q. And, now, so that the jury will understand, who is Mr. John Santillo?

A. Assistant Superintendent for Personnel for the Dallas School District.

[p. 386]

Q. Am I correct in believing that the Board of Trustees of the Dallas Independent School District was not involved in the decision to remove Coach Jett from his coaching or Athletic Director job?

A. That is correct.

Q. The Board of Trustees hasn't considered it at all, has it?

A. That is correct.

Q. The end of the consideration, I guess the buck stopped with you, didn't it?

A. Yes, sir.

[pp. 386-387]

Q. By the way, had the Board of Trustees of the D.I.S.D. established any policies which set out permissible reasons for non-renewing Coach Jett's oral contract as Coach?

A. Not directly.

Q. Okay. Well, not as Coach, is that correct?

A. As coach, that is correct.

Q. The only reasons that they had set up for non-renewal related only to the teacher portion of the contract, didn't it?

A. That is correct.

[pp. 393-396]

Q. Now, there was — since you weren't involved in the transfer or removal or whatever term we are going to use here of Mr. Jett until about March the 15th of 1983, let's pick up with that date and put it in the chronology of things.

A. All right, sir.

Q. How did this developing incident first come to your attention on that date and through whom?

A. Mr. Kincaide came to my office some time on the 15th and said that he had had a conference with Coach Jett and that there was a problem developing at South Oak Cliff and that he had advised Mr. Jett to go back to the school and see if he couldn't work something out with Mr. Todd — Dr. Todd.

Q. Okay. Do you recall about what time of day that might have been?

A. No, sir, I really don't.

Q. And Mr. Kincaide was the more or less the head person in your Athletic Department at that time?

A. That is correct.

Q. Okay. Did you give Mr. Kincaide any particular directions at that time or was he just reporting that to you?

A. He reported it to me and told me what he had advised Coach Jett to do and I suggested that he go out and try to mediate things between Coach Jett and Dr. Todd.

Q. Okay. Now, let's talk — stop there for just a moment, then. At that time as you understood it did you think that there were any written policies or regulations that set out how the District was to proceed in this instance?

A. No, there was not.

Q. Okay. And similarly then there weren't any written policies or regulations as you see it that told Norm Jett how to proceed? True?

A. Well, there were policies as far as pertaining to the teacher and how he might proceed but not as a Coach or Athletic Director.

Q. But do you understand that he — the problem being brought to your attention was that somebody wanted to transfer him in all capacities?

A. That is correct.

Q. Including the teacher classification?

A. That is correct.

Q. Now, I guess because — well, let me ask. I guess maybe at that time you were looking at it. I guess maybe at that time you were looking at it primarily in his capacity as Athletic Director/Head Coach as opposed to his capacity as teacher?

A. That is correct and of course in his position in general.

Q. Yes. Now, there are very strict — let me — I am sorry, let me ask this. The Personnel Guide of the School District and its written policies, when they say teacher generally includes within that both Administrators and Coaches and all employees, don't they?

A. Generally that is correct.

Q. So that if one looked at the policies and the Personnel Guide of the District and it set out the due process and procedure or a transfer procedure or a demotion procedure for teachers then it would apply also and has been applied customarily by the District to all employees except non-contract employees?

A. It has not applied to administration. It has applied to all other professional employees but not Administrators per se.

Q. Well —

A. There is a separate policy for Administrators.

Q. Okay. Well, are you suggesting that Coach Jett and his Athletic Director job and Head Coaching job was an Administrator?

A. Not under the definition of an Administrator for the District. We have one for teachers and for Administrators but nothing for Athletic Director/Coach.

Q. Well, am I correct in believing though that even though your written policies don't specify Athletic Director/Coach that they have been customarily — that teacher policies have customarily applied to Athletic Director/Coach?

A. That is generally true, yes.

Q. All right. Now, I want to get a little bit ahead again and I am sorry to skip around here but when you told Mr. Kincaide to see if he could work it out I take it that what you were getting at was suggesting that he try to mediate between Dr. Todd on the one hand and Coach Jett on the other to work out the problem so that would go away, true?

A. That is correct.

Q. And that I guess was sort of just an unwritten kind of practice that you wanted to encourage?

A. That is right.

[p. 399]

Q. Now, I am going to depart again in terms of chronology here so the jury can understand, Mr. Wright, you never did personally get involved in trying to make a judgment about who was right and who was wrong, did you?

A. No, I asked my staff to do an investigation and bring me back a report and finally made that decision.

Q. But even then you really didn't examine the merits of whether Dr. Todd was right and Mr. Jett was wrong or Dr. Todd was wrong and Mr. Jett was right? You simply made a final decision to solve the problem to prevent conflict?

A. All I had heard was Coach Jett's side and there is always two sides to every problem.

Q. Yes, that is what I am getting at. You didn't base your decision on who was right and wrong, did you?

A. No, I didn't at that time.

[r.p. 403-405; pp. 25-27, Partial Transcript]

Q. And it was at that meeting you say your decision was made?

A. That is correct.

Q. You also were of the opinion and perhaps you still are that the final decision was yours and that Coach Jett had no further recourse beyond that?

A. That is correct.

Q. And you were then of the opinion and still are that that was the only procedure, that is the informal meeting and conference that had transpired that existed within the D.I.S.D. to deal with the Jett situation?

A. No, it was not the only procedure but it just happened that the end results would have ended up the same because it would still have to come to me for the final decision. Coach Jett could have had the opportunity — whether he was aware of it or not I am not sure — of appealing the decision of Dr. Todd and at which time I would have appointed a panel to hear that. They would have still made the recommendation to me. Since Coach Jett came to me directly as Mr. Santillo directed him then that procedure was bypassed.

Q. Well, actually, at the time — if you would turn to Page 36 of Volume I of your deposition. On September the 15th of '83, Page 36, Line 14, you were asked the question

"Are you aware of written policy or regulation or grievance procedure in the D.I.S.D. which would have permitted Coach Jett after you made the decision to uphold Principal Todd to then request and be given a formal hearing for the purpose of reconsideration of and possible reversal of your decision?"

And you answered "I am not aware of any request," didn't you?

A. That is right.

Q. Okay. Then you were asked the question "I mean any policy that would permit such a request and a subsequent formal hearing." And you answered "As a teacher that wou'd be true but as a supplemental responsibility of coaching or other responsibilities they are not afforded that opportunity."

A. After the decision had been made there is no appeal to my decision.

[p. 407; p. 29, Partial Transcript]

Q. First of all, I thought you told us a few minutes ago that the policy of the District where they say teachers are customarily applied to Coaches and Athletic Directors?

A. Except that we have a gray area that is not covered here, Mr. Hill, in that Area Superintendents don't make the decision on Athletic Directors and Coaches per se. That is left up between the Athletic Department and the principal and myself.

Q. Is there any written statement of that?

A. No, sir, there is not.

[p. 423; p. 45, Partial Transcript]

Q. Now, with respect to Coaches and Athletic Directors I believe you have indicated several times here there is no specific policy that covers that?

A. Not per se, no.

Q. But you have developed some practices that you attempt to follow within the District when those problems arise?

A. That is correct.

[pp. 429-431; pp. 51-53, Partial Transcript]

A. Of course, when I received the call from Mr. Santillo he was in a conference with Coach Jett at that time and he suggested that we had a serious problem in South Oak Cliff

and that he had been to Mr. Kincaid and been to him and he suggested that I should talk with Coach Jett and of course sent him over and I talked to Coach Jett.

Q. All right. And that occurred on March when?

A. March 13th.

Q. And do you recall at that time what Coach Jett said to you in that meeting and if so tell us?

A. Several things that Coach Jett told me. Of course, he reviewed for me first his career and his win-loss record and most of the things we heard Coach Jett testify about. The number of players that played professional football and the number of college scholarships and so forth. Of course the substance of it then when we got down to asking him the reasons why that Dr. Todd had recommended that he be transferred, he thought and expressed to me at that time he thought Dr. Todd had wanted a black Coach and was trying to find a way to get rid of him and so I asked Coach Jett in his opinion why did Dr. Todd make the recommendation he did and of course he talked about the problems of going back to the original principal and financial things that he testified about yesterday. The principal I believe was McWhorter and that how he had established an athletic program at South Oak Cliff that was second to none and which I think we all agreed with that and that he felt that Dr. Todd was interfering with that program and that Dr. Todd was making some unreasonable demands on him so I asked Coach Jett if Dr. Todd, the principal in charge of the school, and that if he was making any unreasonable demands on him and he said he thought he was that whenever he forced him or caused him to have to come to teachers' meetings or faculty meetings and keep records of inventory and things like that that he thought that was unreasonable, that it was preventing him from doing his job and I said "Coach Jett, as a principal if you were the principal of that building would you consider that unreasonable" because I am charging that Dr. Todd as principal of the school to see that instruction takes place, that teachers have proper lesson plans and everybody accounts for things and I don't consider that

unreasonable. I said "You know, it appears to me that there is a conflict between you two and when that happens, and I have to consider the principal's side of the story too, which I hadn't heard, but that if it happened the way he described it then I would suggest he should consider taking an assignment somewhere else because it appeared to me they are having difficulty working together, but that I assured him I had every confidence in the world in him and his ability and that whatever happened I would see to it that we would take care of him some way and that we would find a position for him somewhere else but it appeared that they were having difficulty reconciling their differences but I would like to have an opportunity to investigate it and would give him a decision as soon as I could.

So of course it appeared that at the time that Coach Jett was of the opinion that it was a racial situation that - Coach Todd - that Principal Todd wanted a black coach and that for that reason he was recommending that he be transferred somewhere else and that he felt that Dr. Todd was placing some unreasonable demands on him and that is when I suggested to him I thought he should consider leaving.

[pp. 432-433; pp. 54-55, Partial Transcript]

Q. Now, after this conference with Mr. Jett did you have subsequent conferences with members of your staff?

A. Yes. I immediately went to Dr. Reed who is Mr. Kincaid's supervisor and asked Dr. Reed to work with Mr. Kincaid to check out to find out what the problems were at South Oak Cliff and why we had the situation and I also asked Dr. Bell, who is the Assistant Superintendent for that sub District and Dr. Leon Hayes who is Dr. Todd's immediate supervisor to look into the matter and find out everything that they could about the situation and we will get back together and make a recommendation then as to what action I will take.

Q. And it was a week later, 3-25-83, that you all got back together?

A. Yes.

Q. And Dr. Todd was in attendance at that meeting?

A. Dr. Todd, yes, he was present.

[pp. 434-435; pp. 56-57, Partial Transcript]

Q. And can you . : this time summarize the substance of that meeting?

A. Well, I - v reviewed my conversation with Coach Jett and Mr. Kincaid. I reviewed his and each person reviewed their finding. All of them came to the conclusion that there were irreconcilable differences between Dr. Todd and Coach Jett. They didn't think that the two men could work together in the same building and so I concluded from that I would recommend moving Coach Jett to another position but also with the understanding that there wasn't a person there that didn't feel that the decision of transfer had to occur but there was other places in this District for Coach Jett and that everyone there made a comment they were going to try to find that position and Coach Jett had something to offer the District. We had something here that is unfortunate that happens a lot of time between two people and when it occurs someone has to give and I have to make that judgment decision as to who has to go and in this case it was Coach Jett but we all were of the opinion that we still wanted Coach Jett in some other position, another coaching Head Directorship as soon as one opened up.

Q. And as a result at the conclusion of that meeting you made a decision?

A. I did.

TESTIMONY OF DALLAS ISD ASSISTANT SUPERINTENDENT JOHN SANTILLO

[p. 456; p. 78, Partial Transcript]

Q. You are not involved in the day-to-day supervision or

evaluation of Mr. Jett either as a teacher or Athletic Director/Head Coach?

A. Not directly, no, sir.

Q. And you don't have any personal knowledge of the allocations or incidents underlying the dispute about why Coach Jett was going to be removed?

A. No, sir.

[pp. 457-459; pp. 79-81, Partial Transcript]

Q. How that first came to your attention?

A. Mr. Kincaid sent me a letter, carbon copy of the letter that Dr. Todd had written to Mr. Kincaid relative to Mr. Jett and Mr. Jett came to see me as I recall approximately at eight o'clock on Friday, March the 18th.

Q. Would that be in the morning?

A. Yes, sir.

Q. Okay. And your recollection is the first time he went to see you?

A. That is my recollection, yes, sir.

Q. Okay. Did he tell you he had been fired?

A. I don't remember that term being used.

Q. Okay. Well, did he inform you that he was being relieved of his Athletic Director/Head Coach duties?

A. Yes, sir.

Q. Did you observe — could you observe what emotional condition he was in at that time?

A. Well, he was quite disturbed.

Q. Can you describe for me?

A. Well, as any normal reaction he was quite disturbed and upset and frustrated and I would say angry.

Q. And was he seeking guidance from you as to what to do next or what?

A. I don't think he requested guidance from me. We discussed the situation.

Q. All right. And at that time did you advise him to accept some temporary assignment and wait for another opportunity to return to coaching?

A. As I recall, Mr. Hill, I recommended to Mr. Jett that he return to South Oak Cliff High School and try to resolve the situation and we would discuss the matter with the appropriate officials and try to bring a resolution to the situation.

Q. Okay. Did he leave alone or did you two leave your office together that day?

A. As I recall as a result of what Mr. Jett said to me I called the General Superintendent's office.

Q. At that time?

A. Yes, sir. And asked Mr. Wright if he could possibly see Mr. Jett in view of the statements Mr. Jett made.

Q. What had Mr. Jett told you?

A. Mr. Jett indicated to me that there were racial overtones in Dr. Todd's decision and I remember quite clearly that Mr. Jett said Dr. Todd should be the one who is fired instead of me and he made some other further statements but I do remember those two particular statements quite accurately.

Q. And was he seeking guidance from you as to what to do next or what?

A. I don't think he requested guidance from me. We discussed the situation.

Q. All right. And at that time did you advise him to accept some temporary assignment and wait for another opportunity to return to coaching?

A. As I recall, Mr. Hill, I recommended to Mr. Jett that he return to South Oak Cliff High School and try to resolve the situation and we would discuss that matter with the ap-

proper officials and try to bring a resolution to the situation.

Q. Okay. Did he leave alone or did you two leave your office together that day?

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Q. At that time?

A. Yes, sir. And asked Mr. Wright if he could possibly see Mr. Jett in view of the statements Mr. Jett made.

Q. What had Mr. Jett told you?

A. Mr. Jett indicated to me that there were racial overtones in Dr. Todd's decision and I remember quite clearly that Mr. Jett said Dr. Todd should be the one who is fired instead of me and he made some other further statements but I do remember those two particular statements quite accurately.

Q. Okay. And I guess then based primarily on those things you felt the need to get an audience with Superintendent Wright immediately?

A. Yes, sir.

Q. And you did so?

A. Yes, sir, I called Mr. Wright's office and as I recall his secretary indicated that Mr. Jett should come over. He might have to wait for a short time but Mr. Wright would see him.

Q. Did you go with him?

A. No, sir.

Q. And the last you saw then I suppose of Coach Jett that day you saw him leave presumably to go to see Superintendent Wright?

A. Yes, sir.

Q. Did you speak with Superintendent Wright later in the day about it?

A. I don't recall speaking to Superintendent Wright in the day.

Q. What is the next thing you do recall about the incident so far as you were concerned?

A. On Friday March the 25th at approximately five o'clock in the afternoon there was a meeting with Mr. Wright present and some other school officials and myself and we were reviewing the Norman Jett situation.

Q. Dr. Todd was there?

A. Yes, sir.

Q. Norman Jett was not there?

A. Norman Jett was not there.

[pp. 460-461; pp. 82-83, Partial Transcript]

Q. Was any report of any investigation that had been made in connection with the allegations in the letter?

A. Not to my knowledge.

Q. And insofar as you know there really hadn't been any investigation undertaken had there?

A. Not to my knowledge.

Q. Now, at the conclusion of that meeting were you instructed — let me back up. Prior to that meeting had you heard Mr. Wright say whether he had decided what to do?

A. No, sir, he had not.

Q. At that meeting did he tell you he had decided what to do?

A. Yes, sir.

Q. And that was to agree with the principal and move Mr. Jett?

A. Mr. Wright directed my office to reassign Mr. Jett.

TESTIMONY OF DALLAS ISD
ATHLETIC DIRECTOR JOHN KINCAIDE

[p. 616]

Q. Would you please state your name, sir.

A. John Kincaide.

Q. Mr. Kincaide, what is your position with the Dallas Independent School District?

A. Athletic Director.

Q. And will you generally describe your duties and responsibilities?

A. The Department is responsible for the implementation of the competitive athlete program in the Dallas Independent School District.

[pp. 627-628]

Q. Sir, as of — in your mind as of the things that you were personally aware of, are you aware of any good reasons why Coach Jett should have been relieved of his Athletic Director responsibilities?

A. Being personally aware of my direct association and communications with Coach Jett, no, I would say not that I know of any good reason.

UNITED STATES
CONSTITUTIONAL PROVISIONS

Thirteenth Amendment

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

Fourteenth Amendment
[Sections (1) and (5)]

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Fifteenth Amendment

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

STATUTES
United States Code

18 U.S.C. § 241

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be fined not more than \$10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life.

18 U.S.C. § 242

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than \$1,000 or imprisoned not more than one year, or both; and if death results shall be subject to imprisonment for any term of years or for life.

28 U.S.C. § 1331

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. § 1343

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

(b) For purposes of this section —

(1) the District of Columbia shall be considered to be a State; and

(2) any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1981

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

42 U.S.C. § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C § 1988

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and of Title "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

Revised Statutes

Title 70, Chapter 7

"Crimes Against the Elective Franchise
and Civil Rights of Citizens" (1874)

Sec. 5506. Every person who, by any unlawful means, hinders, delays, prevents, or obstructs, or combines and confederates with others to hinder, delay, prevent, or obstruct, any citizen from doing any act required to be done to qualify him to vote, or from voting at any election in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be fined not less than five hundred dollars, or be imprisoned not less than one month nor more than one year, or be punished by both such fine and imprisonment.

Sec. 5507. Every person who prevents, hinders, controls, or intimidates another from exercising, or in exercising the right of suffrage, to whom that right is guaranteed by the fifteenth amendment to the Constitution of the United States, by means of bribery or threats of depriving such person of employment or occupation, or of ejecting such person from a rented house, lands, or other property, or by threats of refusing to renew leases or contracts for labor, or by threats of violence to himself or family, shall be punished as provided in the preceding section.

Sec. 5508. If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than five thousand dollars and imprisoned not more than ten years; and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States.

United States Statutes at Large

Civil Rights Act of April 9, 1866
(c. 31, 14 Stat. 27)

CHAP. XXXL — An Act to protect all Persons in the United States in their Civil Rights, and furnish the Means of their Vindication.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States; and such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall have the same right, in every State and Territory in the United States, to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens, and shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding.

Sec. 2. And be it further enacted, That any person who, under color of any law, statute, ordinance, regulation, or custom, shall subject, or cause to be subjected, any inhabitant of any State or Territory to the deprivation of any right secured or protected by this act, or to different punishment, pains, or penalties on account of such person having at any time been held in a condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, or by reason of his color or race, than is prescribed for the punishment of white persons, shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by fine not ex-

ceeding one thousand dollars, or imprisonment not exceeding one year, or both, in the discretion of the court.

Sec. 3. And be it further enacted, That the district courts of the United States, within their respective districts, shall have, exclusively of the courts of the several States, cognizance of all crimes and offences committed against the provisions of this act, and also, concurrently with the circuit courts of the United States, of all causes, civil and criminal, affecting persons who are denied or cannot enforce in the courts or judicial tribunals of the State or locality where they may be any of the rights secured to them by the first section of this act; and if any suit or prosecution, civil or criminal, has been or shall be commenced in any State court, against any such person, for any cause whatsoever, or against any officer, civil or military, or other person, for any arrest or imprisonment, trespasses, or wrongs done or committed by virtue or under color of authority derived from this act or the act establishing a Bureau for the relief of Freedmen and Refugees, and all acts amendatory thereof, or for refusing to do any act upon the ground that it would be inconsistent with this act, such defendant shall have the right to remove such cause for trial to the proper district or circuit court in the manner prescribed by the "Act relating to habeas corpus and regulating judicial proceedings in certain cases," approved March three, eighteen hundred and sixty-three, and all acts amendatory thereof. The jurisdiction in civil and criminal matters hereby conferred on the district and circuit courts of the United States shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where such laws are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offences against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of the cause, civil or criminal, is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern said

courts in the trial and disposition of such cause, and if of acriminal nature, in the infliction of punishment on the party found guilty.

Sec. 4. And be it further enacted, That the district attorneys, marshals, and deputy marshals of the United States, the commissioners appointed by the circuit and territorial courts of the United States, with powers of arresting, imprisoning, or bailing offenders against the laws of the United States, the officers and agents of the Freedmen's Bureau, and every other officer who may be specially empowered by the President of the United States, shall be, and they are hereby, specially authorized and required, at the expense of the United States, to institute proceedings against all and every person who shall violate the provisions of this act, and cause him or them to be arrested and imprisoned, or bailed, as the case may be, for trial before such court of the United States or territorial court as by this act has cognizance of the offence. And with a view to affording reasonable protection to all persons in their constitutional rights of equality before the law, without distinction of race or color, or previous condition of slavery or involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, and to the prompt discharge of the duties of this act, it shall be the duty of the circuit courts of the United States and the superior courts of the Territories of the United States, from time to time, to increase the number of commissioners, so as to afford a speedy and convenient means for the arrest and examination of persons charged with a violation of this act, and the same duties with regard to offences created by this act, as they are authorized by law to exercise with regard to other offences against the laws of the United States.

Sec. 5. And be it further enacted, That it shall be the duty of all marshals and deputy marshals to obey and execute all warrants and precepts issued under the provisions of this act, when to them directed; and should any marshal or deputy marshal refuse to receive such warrant or other process when tendered, or to use all proper means diligently to ex-

ecute the same, he shall, on conviction thereof, be fined in the sum of one thousand dollars, to the use of the person upon whom the accused is alleged to have committed the offence. And the better to enable the said commissioners to execute their duties faithfully and efficiently, in conformity with the Constitution of the United States and the requirements of this act, they are hereby authorized and empowered, within their counties respectively, to appoint, in writing, under their hands, any one or more suitable persons, from time to time, to execute all such warrants and other process as may be issued by them in the lawful performance of their respective duties; and the persons so appointed to execute any warrant or process as aforesaid shall have authority to summon and call to their aid the bystanders or posse comitatus of the proper county, or such portion of the land or naval forces of the United States, or of the militia, as may be necessary to the performance of the duty with which they are charged, and to insure a faithful observance of the clause of the Constitution which prohibits slavery, in conformity with the provisions of this act; and said warrants shall run and be executed by said officers anywhere in the State or Territory within which they are issued.

Sec. 6. And be it further enacted, That any person who shall knowingly and wilfully obstruct, hinder, or prevent any officer, or other person charged with the execution on any warrant or process issued under the provisions of this act, or any person or persons lawfully assisting him or them, from arresting any person for whose apprehension such warrant or process may have been issued, or shall rescue or attempt to rescue such person from the custody of the officer, other person or persons, or those lawfully assisting as aforesaid, when so arrested pursuant to the authority herein given and declared, or shall aid, abet, or assist any person so arrested as aforesaid, directly or indirectly, to escape from the custody of the officer or other person legally authorized as aforesaid, or shall harbor or conceal any person for whose arrest a warrant or process shall have been issued as aforesaid, so as to prevent his discovery and

arrest after notice or knowledge of the fact that a warrant has been issued for the apprehension of such person, shall, for either of said offences, be subject to a fine not exceeding one thousand dollars, and imprisonment not exceeding six months, by indictment and conviction before the district court of the United States for the district in which said offence may have been committed, or before the proper court of criminal jurisdiction, if committed within any one of the organized Territories of the United States.

Sec. 7. And be it further enacted, That the district attorneys, the marshals, their deputies, and the clerks of the said district and territorial courts shall be paid for their services the like fees as may be allowed to them for similar services in other cases; and in all cases where the proceedings are before a commissioner, he shall be entitled to a fee of ten dollars in full for his services in each case, inclusive of all services incident to such arrest and examination. The person or persons authorized to execute the process to be issued by such commissioners for the arrest of offenders against the provisions of this act shall be entitled to a fee of five dollars for each person he or they may arrest and take before any such commissioner as aforesaid, with such other fees as may be deemed reasonable by such commissioner for such other additional services as may be necessarily performed by him or them, such as attending at the examination, keeping the prisoner in custody, and providing him with food and lodging during his detention, and until the final determination of such commissioner, and in general for performing such other duties as may be required in the premises; such fees to be made up in conformity with the fees usually charged by the officers of the courts of justice within the proper district or county, as near as may be practicable, and paid out of the Treasury of the United States on the certificate of the judge of the district within which the arrest is made, and to be recoverable from the defendant as part of the judgment in case of conviction.

Sec. 8. And be it further enacted, That whenever the President of the United States shall have reason to believe

that offences have been or are likely to be committed against the provisions of this act within any judicial district, it shall be lawful for him, in his discretion, to direct the judge, marshal, and district attorney of such district to attend at such place within the district, and for such time as he may designate, for the purpose of the more speedy arrest and trial of persons charged with a violation of this act; and it shall be the duty of every judge or other officer, when any such requisition shall be received by him, to attend at the place and for the time therein designated.

Sec. 9. And be it further enacted, That it shall be lawful for the President of the United States, or such person as he may empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia, as shall be necessary to prevent the violation and enforce the due execution of this act.

Sec. 10. And be it further enacted, That upon all questions of law arising in any cause under the provisions of this act a final appeal may be taken to the Supreme Court of the United States.

Civil Rights Act of May 31, 1870
(c. 114, 16 Stat. 140)

CHAP. CXIV — An Act to enforce the Right of Citizens of the United States to vote in the several States of this Union, and for other Purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all citizens of the United States who are or shall be otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding.

Sec. 2. And be it further enacted, That if by or under the authority of the constitution or laws of any State, or the laws of any Territory, any act is or shall be required to be done as a prerequisite or qualification for voting, and by such constitution or laws persons or officers are or shall be charged with the performance of duties in furnishing to citizens an opportunity to perform such prerequisite, or to become qualified to vote, it shall be the duty of every such person and officer to give to all citizens of the United States the same and equal opportunity to perform such prerequisite, and to become qualified to vote without distinction of race, color, or previous condition of servitude; and if any such person or officer shall refuse or knowingly omit to give full effect to this section, he shall, for every offence, forfeit and pay the sum of five hundred dollars to the person aggrieved thereby, to be recovered by an action on the case, with full costs, and such allowance for counsel fees as the court shall deem just, and shall also, for every such offence, be deemed guilty of a misdemeanor, and shall, on conviction thereof, be fined not less than five hundred dollars, or be imprisoned not less than one month and not more than one year, or both, at the discretion of the court.

Sec. 3. And be it further enacted, That whenever, by or under the authority of the constitution or laws of any State, or the laws of any Territory, any act is or shall be required to [be] done by any citizen as a prerequisite to qualify or entitle him to vote, the offer of any such citizen to perform the act required to be done as aforesaid shall, if it fail to be carried into execution by reason of the wrongful act or omission aforesaid of the person or officer charged with the duty of receiving or permitting such performance or offer to perform, or acting hereon, be deemed and held as a performance in law of such act; and the person so offering and failing as aforesaid, and being otherwise qualified, shall be entitled to vote in the same manner and to the same extent as if he had in fact performed such act; and any judge, inspector, or other officer of election whose duty it is or shall be to receive, count, certify, register, report, or give effect to the

vote of any such citizen who shall wrongfully refuse or omit to receive, count, certify, register, report, or give effect to the vote of such citizen upon the presentation by him of his affidavit stating such offer and the time and place thereof, and the name of the officer or person whose duty it was to act thereon, and that he was wrongfully prevented by such person or officer from performing such act, shall for every such offence forfeit and pay the sum of five hundred dollars to the person aggrieved thereby, to be recovered by an action on the case, with full costs, and such allowance for counsel fees as the court shall deem just, and shall also for every such offence be guilty of a misdemeanor, and shall, on conviction thereof, be fined not less than five hundred dollars, or be imprisoned not less than one month and not more than one year, or both, at the discretion of the court.

Sec. 4. And be it further enacted, That if any person, by force, bribery, threats, intimidations, or other unlawful means, shall hinder, delay, prevent, or obstruct, or shall combine and confederate with others to hinder, delay, prevent, or obstruct, any citizen from doing any act required to be done to qualify him to vote or from voting at any election as aforesaid, such person shall for every such offence forfeit and pay the sum of five hundred dollars to the person aggrieved thereby, to be recovered by an action on the case, with full costs, and such allowance for counsel fees as the court shall deem just, and shall also for every such offence be guilty of a misdemeanor, and shall, on conviction thereof, be fined not less than five hundred dollars, or be imprisoned not less than one month and not more than one year, or both, at the discretion of the court.

Sec. 5. And be it further enacted, That if any person shall prevent, hinder, control, or intimidate, or shall attempt to prevent, hinder, control, or intimidate, any person from exercising or in exercising the right of suffrage, to whom the right of suffrage is secured or guaranteed by the fifteenth amendment to the Constitution of the United States, by means of bribery, threats, or threats of depriving such person of employment or occupation, or of ejecting such person

from rented house, lands, or other property, or by threats of refusing to renew leases or contracts for labor, or by threats of violence to himself or family, such person so offending shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be fined not less than five hundred dollars, or be imprisoned not less than one month and not more than one year, or both, at the discretion of the court.

Sec. 6. And be it further enacted, That if two or more persons shall band or conspire together, or go in disguise upon the public highway, or upon the premises of another, with intent to violate any provision of this act, or to injure, oppress, threaten, or intimidate any citizen with intent to prevent or hinder his free exercise and enjoyment of any right or privilege granted or secured to him by the Constitution or laws of the United States, or because of his having exercised the same, such persons shall be held guilty of felony, and, on conviction thereof, shall be fined or imprisoned, or both, at the discretion of the court,—the fine not to exceed five thousand dollars, and the imprisonment not to exceed ten years,—and shall, moreover, be thereafter ineligible to, and disabled from holding, any office or place of honor, profit, or trust created by the Constitution or laws of the United States.

Sec. 7. And be it further enacted, That if in the act of violating any provision in either of the two preceding sections, any other felony, crime, or misdemeanor shall be committed, the offender, on conviction of such violation of said sections, shall be punished for the same with such punishments as are attached to the said felonies, crimes, and misdemeanors by the laws of the State in which the offence may be committed.

Sec. 8. And be it further enacted, That the district courts of the United States, within their respective districts, shall have, exclusively of the courts of the several States, cognizance of all crimes and offences committed against the provisions of this act, and also, concurrently with the circuit courts of the United States, of all causes, civil and criminal, arising under this act, except as herein otherwise provided.

and the jurisdiction hereby conferred shall be exercised in conformity with the laws and practice governing United States courts; and all crimes and offences committed against the provisions of this act may be prosecuted by the indictment of a grand jury, or, in cases of crimes and offences not infamous, the prosecution may be either by indictment or information filed by the district attorney in a court having jurisdiction.

Sec. 9. And be it further enacted, That the district attorneys, marshals, and deputy marshals of the United States, the commissioners appointed by the circuit and territorial courts of the United States, with powers of arresting, imprisoning, or bailing offenders against the laws of the United States, and every other officer who may be specially empowered by the President of the United States, shall be, and they are hereby, specially authorized and required, at the expense of the United States, to institute proceedings against all and every person who shall violate the provisions of this act, and cause him or them to be arrested and imprisoned, or bailed, as the case may be, for trial before such court of the United States or territorial court as has cognizance of the offense. And with a view to afford reasonable protection to all persons in their constitutional right to vote without distinction of race, color, or previous condition of servitude, and to the prompt discharge of the duties of this act, it shall be the duty of the circuit courts of the United States, and the superior courts of the Territories of the United States, from time to time, to increase the number of commissioners, so as to afford a speedy and convenient means for the arrest and examination of persons charged with a violation of this act; and such commissioners are hereby authorized and required to exercise and discharge all the powers and duties conferred on them by this act, and the same duties with regard to offences created by this act as they are authorized by law to exercise with regard to other offences against the laws of the United States.

Sec. 10. And be it further enacted. That it shall be the duty of all marshals and deputy marshals to obey and execute all warrants and precepts issued under the provisions of this act, when to them directed; and should any marshal or deputy marshal refuse to receive such warrant or other process when tendered, or to use all proper means diligently to execute the same, he shall, on conviction thereof, be fined in the sum of one thousand dollars, to the use of the person deprived of the rights conferred by this act. And the better to enable the said commissioners to execute their duties faithfully and efficiently, in conformity with the Constitution of the United States and the requirements of this act, they are hereby authorized and empowered, within their districts respectively, to appoint, in writing, under their hands, any one or more suitable persons, from time to time, to execute all such warrants and other process as may be issued by them in the lawful performance of their respective duties, and the persons so appointed to execute any warrant or process as aforesaid shall have authority to summon and call to their aid the bystanders or posse comitatus of the proper county, or such portion of the land or naval forces of the United States, or of the militia, as may be necessary to the performance of the duty with which they are charged, and to insure a faithful observance of the fifteenth amendment to the Constitution of the United States; and such warrants shall run and be executed by said officers anywhere in the State or Territory within which they are issued.

Sec. 11. And be it further enacted. That any person who shall knowingly and wilfully obstruct, hinder, or prevent any officer or other person charged with the execution of any warrant or process issued under the provisions of this act, or any person or persons lawfully assisting him or them from arresting any person for whose apprehension such warrant or process may have been issued, or shall rescue or attempt to rescue such person from the custody of the officer or other person or persons, or those lawfully assisting as aforesaid, when so arrested pursuant to the authority

herein given and declared, or shall aid, abet, or assist any person so arrested as aforesaid, directly or indirectly, to escape from the custody of the officer or other person legally authorized as aforesaid, or shall harbor or conceal any person for whose arrest a warrant or process shall have been issued as aforesaid, so as to prevent his discovery and arrest after notice or knowledge of the fact that a warrant has been issued for the apprehension of such person, shall, for either of said offences, be subject to a fine not exceeding one thousand dollars, or imprisonment not exceeding six months, or both, at the discretion of the court, on conviction before the district or circuit court of the United States for the district or circuit in which said offence may have been committed within any one of the organized Territories of the United States.

Sec. 12. And be it further enacted. That the commissioners, district attorneys, the marshals, their deputies, and the clerks of the said district, circuit, and territorial courts shall be paid for their services the like fees as may be allowed to them for similar services in other cases. The person or persons authorized to execute the process to be issued by such commissioners for the arrest of offenders against the provisions of this act shall be entitled to the usual fees allowed to the marshal for an arrest for each person he or they may arrest and take before any such commissioner as aforesaid, with such other fees as may be deemed reasonable by such commissioner for such other additional services as may be necessarily performed by him or them, such as attending at the examination, keeping the prisoner in custody, and providing him with food and lodgir.g during his detention and until the final determination of such commissioner, and in general for performing such other duties as may be required in the premises; such fees to be made up in conformity with the fees usually charged by the officers of the courts of justice within the proper district or county as near as may be practicable, and paid out of the treasury of the United States on the certificate of the judge of the district within which the arrest is made, and to be recoverable from the defendant as part of the judgment in

case of conviction.

Sec. 13. And be it further enacted, That it shall be lawful for the President of the United States to employ such part of the land or naval forces of the United States, or of the militia, as shall be necessary to aid in the execution of judicial process issued under this act.

Sec. 14. And be it further enacted, That whenever any person shall hold office, except as a member of Congress or of some State legislature, contrary to the provisions of the third section of the fourteenth article of amendment of the Constitution of the United States, it shall be the duty of the district attorney of the United States for the district in which such person shall hold office, as aforesaid, to proceed against such person, by writ of quo warranto, returnable to the circuit or district court of the United States in such district, and to prosecute the same to the removal of such person from office; and any writ of quo warranto, so brought, as aforesaid, shall take precedence of all other cases on the docket of the court to which it is made returnable, and shall not be continued unless for cause proved to the satisfaction of the court.

Sec. 15. And be it further enacted, That any person who shall hereafter knowingly accept or hold any office under the United States, or any State to which he is ineligible under the third section of the fourteenth article of amendment of the Constitution of the United States, or who shall attempt to hold or exercise the duties of any such office, shall be deemed guilty of a misdemeanor against the United States, and, upon conviction thereof before the circuit or district court of the United States, shall be imprisoned not more than one year, or fined not exceeding one thousand dollars, or both, at the discretion of the court.

Sec. 16. And be it further enacted, That all persons within the jurisdiction of the United States shall have the same right in every State and Territory in the United States to make and enforce contracts, to sue, be parties, and give evidence, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and none other, any law, statute, ordinance,

regulation, or custom, to the contrary notwithstanding. No tax or charge shall be imposed or enforced by any State upon any person immigrating thereto from a foreign country which is not equally imposed and enforced upon every person immigrating to such State from any other foreign country; and any law of any State in conflict with this provision is hereby declared null and void.

Sec. 17. And be it further enacted, That any person who, under color of any law, statute, ordinance, regulation, or custom, shall subject, or cause to be subjected, any inhabitant of any State or Territory to the deprivation of any right secured or protected by the last preceding section of this act, or to different punishment, pains, or penalties on account of such person being an alien, or by reason of his color or race, than is prescribed for the punishment of citizens, shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or both, in the discretion of the court.

Sec. 18. And be it further enacted, That the act to protect all persons in the United States in their civil rights, and furnish the means of their vindication, passed April nine, eighteen hundred and sixty-six, is hereby re-enacted; and sections sixteen and seventeen hereof shall be enforced according to the provisions of said act.

Sec. 19. And be it further enacted, That if at any election for representative or delegate in the Congress of the United States any person shall knowingly personate and vote, or attempt to vote, in the name of any other person, whether living, dead, or fictitious; or vote more than once in the same election for any candidate for the same office; or vote at a place where he may not be lawfully entitled to vote; or vote without having a lawful right to vote; or do any unlawful act to secure a right or an opportunity to vote for himself or any other person; or by force, threat, menace, intimidation, bribery, reward, or offer, or promise thereof, or otherwise unlawfully prevent any qualified voter of any State of the United States of America, or of any Territory thereof, from

freely exercising the right of suffrage, or by any such means induce any voter to refuse to exercise such right; or compel or induce by any such means, or otherwise, any officer of an election in any such State or Territory to receive a vote from a person not legally qualified or entitled to vote; or interfere in any manner with any officer of said elections in the discharge of his duties; or by any of such means, or other unlawful means, induce any officer of an election, or officer whose duty it is to ascertain, announce, or declare the result of any such election, or give or make any certificate, document, or evidence in relation thereto, to violate or refuse to comply with his duty, or any law regulating the same; or knowingly and wilfully receive the vote of any person not entitled to vote, or refuse to receive the vote of any person entitled to vote; or aid, counsel, procure, or advise any such voter, person, or officer to do any act hereby made a crime, or to omit to do any duty the omission of which is hereby made a crime, or attempt to do so, every such person shall be deemed guilty of a crime, and shall for such crime be liable to prosecution in any court of the United States of competent jurisdiction, and, on conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment for a term not exceeding three years, or both, in the discretion of the court, and shall pay the costs of prosecution.

Sec. 20. And be it further enacted, That if, at any registration of voters for an election for representative or delegate in the Congress of the United States, any person shall knowingly personate and register, or attempt to register, in the name of any other person, whether living, dead, or fictitious, or fraudulently register, or fraudulently attempt to register, not having a lawful right so to do; or do any unlawful act to secure registration for himself or any other person; or by force, threat, menace, intimidation, bribery, reward, or offer, or promise thereof, or other unlawful means, prevent or hinder any person having a lawful right to register from duly exercising such right; or compel or induce, by any of such means, or other unlawful means, any officer of registration to admit to registration any person not

legally entitled thereto, or interfere in any manner with any officer of registration in the discharge of his duties, or by any such means, or other unlawful means, induce any officer of registration to violate or refuse to comply with his duty, or any law regulating the same; or knowingly and wilfully receive the vote of any person not entitled to vote, or refuse to receive the vote of any person entitled to vote, or aid, counsel, procure, or advise any such voter, person, or officer to do any act hereby made a crime, or to omit any act, the omission of which is hereby made a crime, every such person shall be deemed guilty of a crime, and shall be liable to prosecution and punishment therefor, as provided in section nineteen of this act for persons guilty of any of the crimes therein specified: *Provided*, That every registration made under the laws of any State or Territory, for any State or other election at which such representative or delegate in Congress shall be chosen, shall be deemed to be a registration within the meaning of this act, notwithstanding the same shall also be made for the purposes of any State, territorial, or municipal election.

Sec. 21. And be it further enacted, That whenever, by the laws of any State or Territory, the name of any candidate or person to be voted for as representative or delegate in Congress shall be required to be printed, written, or contained in any ticket or ballot with other candidates or persons to be voted for at the same election for State, territorial, municipal, or local officers, it shall be sufficient *prima facie* evidence, either for the purpose of indicting or convicting any person charged with voting, or attempting or offering to vote, unlawfully under the provisions of the preceding sections, or for committing either of the offenses thereby created, to prove that the person so charged or indicted, voted, or attempted or offered to vote, such ballot or ticket, or committed either of the offenses named in the preceding sections of this act with reference to such ballot. And the proof and establishment of such facts shall be taken, held, and deemed to be presumptive evidence that such person voted, or attempted or offered to vote, for such representative or delegate, as the case may be or that such offense

was committed with reference to the election of such representative or delegate, and shall be sufficient to warrant his conviction unless it shall be shown that any such ballot, when cast, or attempted or offered to be cast, by him, did not contain the name of any candidate for the office of representative or delegate in the Congress of the United States, or that such offense was not committed with reference to the election of such representative or delegate.

Sec. 22. And be it further enacted, That any officer of any election at which any representative or delegate in the Congress of the United States shall be voted for, whether such officer of election be appointed or created by or under any law or authority of the United States, or by or under any State, territorial, district, or municipal law or authority, who shall neglect or refuse to perform any duty in regard to such election required of him by any law of the United States, or of any State or Territory thereof; or violate any duty so imposed, or knowingly do any act thereby unauthorized, with intent to affect any such election, or the result thereof; or fraudulently make any false certificate of the result of such election in regard to such representative or delegate; or withhold, conceal, or destroy any certificate of record so required by law respecting, concerning, or pertaining to the election of any such representative or delegate; or neglect or refuse to make and return the same as so required by law; or aid, counsel, procure, or advise any voter, person, or officer to do any act by this or any of the preceding sections made a crime; or to omit to do any duty the omission of which is by this or any of said sections made a crime, or attempt to do so, shall be deemed guilty of a crime and shall be liable to prosecution and punishment therefor, as provided in the nineteenth section of this act for persons guilty of any of the crimes therein specified.

Sec. 23. And be it further enacted, That whenever any person shall be defeated or deprived of his election to any office, except elector of President or Vice-President, representative or delegate in Congress, or member of a State legislature, by reason of the denial to any citizen or

citizens who shall offer to vote, of the right to vote, on account of race, color, or previous condition of servitude, his right to hold and enjoy such office, and the emoluments thereof, shall not be impaired by such denial; and such person may bring any appropriate suit or proceeding to recover possession of such office, and in cases where it shall appear that the sole question touching the title to such office arises out of the denial of the right to vote to citizens who so offered to vote, on account of race, color, or previous condition of servitude, such suit or proceeding may be instituted in the circuit or district court of the United States of the circuit or district in which such person resides. And said circuit or district court shall have, concurrently with the State courts, jurisdiction thereof so far as to determine the rights of the parties to such office by reason of the denial of the right guaranteed by the fifteenth article of amendment to the Constitution of the United States, and secured by this act.

Approved, May 31, 1870.

Civil Rights Act of April 20, 1871
(c. 114, 17 Stat. 13)

CHAP. XXIIIA—*An Act to Enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States, and for other Purposes.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who, under color of any law, statute, ordinance, regulation, custom, or usage of any State, shall subject, or cause to be subjected, any person within the jurisdiction of the United States to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States, shall, any such law, statute, ordinance, regulation, custom, or usage of the State to the contrary notwithstanding, be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress; such proceeding to be prosecuted in

the several district or circuit courts of the United States, with and subject to the same rights of appeal, review upon error, and other remedies provided in like cases in such courts, under the provisions of the act of the ninth of April, eighteen hundred and sixty-six, entitled "An act to protect all persons in the United States in their civil rights, and to furnish the means of their vindication"; and the other remedial laws of the United States which are in their nature applicable in such cases.

Sec. 2. That if two or more persons within any State or Territory of the United States shall conspire together to overthrow, or to put down, or to destroy by force the government of the United States, or to levy war against the United States, or to oppose by force, the authority of the government of the United States, or by force, intimidation, or threat to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof, or by force, intimidation, or threat to prevent any person from accepting or holding any office or trust or place of confidence under the United States, or from discharging the duties thereof, or by force, intimidation, or threat to induce any officer of the United States to leave any State, district, or place where his duties as such officer might lawfully be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or to injure his person while engaged in the lawful discharge of the duties of his office, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duty, or by force, intimidation, or threat to deter any party or witness in any court of the United States from attending such court, or from testifying in any matter pending in such court fully, freely, and truthfully, or to injure any such party or witness in his person or property on account of his having so attended or testified, or by force, intimidation, or threat to influence the verdict, presentment, or indictment, of any juror or grand juror in any court of the United States, or to

injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or on account of his being or having been such juror or shall conspire together, or go in disguise upon the public highway or upon the premises of another for the purpose, either directly or indirectly, of depriving any person or any class of person of the equal protection of the laws, or of equal privileges or immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State from giving or securing to all persons within such State the equal protection of the laws, or shall conspire together for the purpose of in any manner impeding, hindering, obstructing, or defeating the due course of justice in any State or Territory, with intent to deny to any citizen of the United States the due and equal protection of the laws, or to injure any person in his person or his property for lawfully enforcing the right of any person or class of persons to the equal protection of the laws, or by force, intimidation, or threat to prevent any citizen of the United States lawfully entitled to vote from giving his support or advocacy in a lawful manner towards or in favor of the election of any lawfully qualified person as an elector of President or Vice-President of the United States, or as a member of the Congress of the United States, or to injure any such citizen in his person or property on account of such support or advocacy, each and every person so offending shall be deemed guilty of a high crime, and, upon conviction thereof in any district or circuit court of the United States having jurisdiction of similar offences, shall be punished by a fine not less than five hundred nor more than five thousand dollars, or by imprisonment, with or without hard labor, as the court may determine, for a period of not less than six months nor more than six years as the court may determine, or by both such fine and imprisonment as the court shall determine. And if any one or more persons engaged in any such conspiracy shall do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby any person shall be injured in his person or property, or deprived of having and exercising any right

or privilege of a citizen of the United States, the person so injured or deprived of such rights and privileges may have and maintain an action for the recovery of damages occasioned by such injury or deprivation of rights and privileges against any one or more of the persons engaged in such conspiracy, such action to be prosecuted in the proper district or circuit court of the United States, with and subject to the same rights of appeal, review upon error, and other remedies provided in like cases in such courts under the provisions of the act of April ninth, eighteen hundred and sixty-six, entitled "An act to protect all persons in the United States in their civil rights, and to furnish the means of their vindication."

Sec. 3. That in all cases where insurrection, domestic violence, unlawful combinations, or conspiracies in any State shall so obstruct or hinder the execution of the laws thereof, and of the United States, as to deprive any portion or class of the people of such State of any of the rights, privileges, or immunities, or protection, named in the Constitution and secured by this act, and the constituted authorities of such States shall either be unable to protect, or shall, from any cause, fail in or refuse protection of the people in such rights, such facts shall be deemed a denial by such State of the equal protection of the laws to which they are entitled under the Constitution of the United States; and in all such cases, or whenever any such insurrection, violence, unlawful combination, or conspiracy shall oppose or obstruct the laws of the United States or the due execution thereof, or impede or obstruct the due course of justice under the same, it shall be lawful for the President, and it shall be his duty to take such measures, by the employment of the militia or the land and naval forces of the United States, or of either, or by other means, as he may deem necessary for the suppression of such insurrection, domestic violence, or combinations; and any person who shall be arrested under the provisions of this and the preceding section shall be delivered to the marshal of the proper district, to be dealt with according to the law.

Sec. 4. That whenever in any State or part of a State the unlawful combinations named in the preceding section of this act shall be organized and armed, and so numerous and powerful as to be able, by violence, to either overthrow or set at defiance the constituted authorities of such State, and of the United States within such State, or when the constituted authorities are in complicity with, or shall connive at the unlawful purposes of, such powerful and armed combinations; and whenever, by reason of either or all of the causes aforesaid, the conviction of such offenders and the preservation of the public safety shall become in such district impracticable, in every such case such combinations shall be deemed a rebellion against the government of the United States, and during the continuance of such rebellion, and within the limits of the district which shall be so under the sway thereof, such limits to be prescribed by proclamation, it shall be lawful for the President of the United States, when in his judgment the public safety shall require it, to suspend the privileges of the writ of habeas corpus, to the end that such rebellion may be overthrown: *Provided*, That all the provisions of the second section of an act titled "An act relating to habeas corpus, and regulating judicial proceedings in certain cases," approved March third, eighteen hundred and sixty-three, which relate to the discharge of prisoners other than prisoners of war, and to the penalty for refusing to obey the order of the court, shall be in full force so far as the same are applicable to the provisions of this section: *Provided further*, That the President shall first have made proclamation, as now provided by law, commanding such insurgents to disperse: *And provided also*, That the provisions of this section shall not be in force after the end of the next regular session of Congress.

Sec. 5. That no person shall be a grand or petit juror in any court of the United States upon any inquiry, hearing, or trial of any suit, proceeding, or prosecution based upon or arising under the provisions of this act who shall, in the judgment of the court, be in complicity with any such combination or conspiracy; and every such juror shall, before

entering upon any such inquiry, hearing, or trial, take and subscribe an oath in open court that he has never, directly or indirectly, counselled, advised, or voluntarily aided any such combination or conspiracy; and each and every person who shall take this oath, and shall therein swear falsely, shall be guilty of perjury, and shall be subject to the pains and penalties declared against that crime, and the first section of the act entitled "An act defining additional causes of challenge and prescribing an additional oath for grand and petit jurors in the United States courts," approved June seventeenth, eighteen hundred and sixty-two, be, and the same is hereby, repealed.

Sec. 6. That any person or persons, having knowledge that any of the wrongs conspired to be done and mentioned in the second section of this act are about to be committed, and having power to prevent or aid in preventing the same, shall neglect or refuse so to do, and such wrongful act shall be committed, such person or persons shall be liable to the person injured, or his legal representatives, for all damages caused by any such wrongful act which such first-named person or persons by reasonable diligence could have prevented; and such damages may be recovered in an action on the case in the proper circuit court of the United States, and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in such action: *Provided*, That such action shall be commenced within one year after such cause of action shall have accrued; and if the death of any person shall be caused by any such wrongful act and neglect, the legal representatives of such deceased person shall have such action therefor, and may recover not exceeding five thousand dollars damages therein, for the benefit of the widow of such deceased person, if any there be, or if there be no widow, for the benefit of the next of kin of such deceased person.

Sec. 7. That nothing herein contained shall be construed to supersede or repeal any former act or law except so far as the same may be repugnant thereto; and any offences heretofore committed against the tenor of any former act

shall be prosecuted, and any proceeding already commenced for the prosecution thereof shall be continued and completed, the same as if this act had not been passed, except so far as the provisions of this act may go to sustain and validate such proceedings.

Approved, April 20, 1871.

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No. 87-2084

Norman Jett,

Petitioner

v.

Dallas Independent School District

ORDER ALLOWING CERTIORARI Filed November 7,
1988

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted, limited to Question 1 presented by the petition. This case is consolidated with case No. 88-214, Dallas Independent School District v. Norman Jett and a total of one hour is allotted for oral argument.

November 7, 1988

109

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